

Death by prescription: The demise of an opiate doctor

By Larry Eisenberg

A discussion between patients at the medical clinic of Dr. Lisa Tseng:

Patient 1: "So what are you here for?"

Patient 2: "Oxy – what about you?"

Patient 1: "Opana – it's great!"

Patient 2: "Oh – that stuff is strong, I'll meet you after the visit and we can trade!"

Patient 1: "Awesome!"

It sounds unbelievable but this was a typical conversation between actual patients in the crowded waiting room of Dr. Lisa Tseng's Advance Care AAA Medical Group in Rowland Heights, California (25 miles East of downtown Los Angeles). Discussions such as this have been confirmed by personal interviews of former patients who survived. Many did not.

Dr. Lisa Tseng operated a storefront medical clinic in a strip mall, where she sold thousands of illegal prescriptions for opiates and other dangerous addictive drugs. Dr. Tseng is an osteopath (D.O.) with no advanced training in pain management or addiction medicine. It has been alleged that she is linked to as many as

15 deaths. Dr. Tseng has been convicted of second-degree murder regarding the deaths of three of her patients:¹ Mr. Vu Nguyen from Lake Forest, CA, who died at age 28; Steven Ogle from Palm Desert, CA, who died at age 25; and Joey Rovero,² a student at Arizona State University, who died at age 21.

People v. Tseng is a landmark case since it is the first in the United States where a physician who prescribed opiates has resulted in a murder conviction. This conviction and the settlements in the related wrongful death cases should certainly curtail the illegal prescribing practices by doctors that readily issue prescriptions for dangerous opiates and other scheduled drugs without a legitimate medical purpose.

Deaths from prescription drug overdoses have exceeded motor vehicle accidents as a leading cause of death in the U.S. The Centers for Disease Control (CDC) has confirmed 37,500 deaths from prescription drug overdoses in 2009. "Opioid pain reliever overdose deaths have quadrupled since 1999.... Opioid abuse/dependence is still approximately four times greater than heroin abuse. In 2012, more than 2 million people reported opioid abuse/dependence." (CDC testimony, Apr. 2014, <http://www.cdc.gov/washington/testimony/2014/t20140429.htm>).

California Pharmacy Board records have confirmed that Tseng wrote 11,500 prescriptions for controlled substances in the one-year period from January 2009 through January 2010. This equates to about 1,000 per month or 250 per week or 50 prescriptions per day. Over a three-year period, Tseng wrote 27,000 prescriptions for scheduled drugs. That is an outrageous

amount for a family doctor who is *not* a board-certified pain management specialist treating only chronic pain patients.

The illegal prescribing practices by "pill mills," such as the clinic operated by Dr. Tseng, and the retail pharmacies that readily sell the drugs, have fueled a national epidemic resulting in drug abuse, diversion and prescription overdose deaths.

Criminal Prosecution: *People v. Tseng*

The criminal charges filed were precedent-setting since second-degree murder was alleged as opposed to involuntary manslaughter. There have been a staggering number of prescription overdose deaths of patients connected to Dr. Tseng. This allowed the prosecution the opportunity to prove implied malice as a legal substitute for the requirement of criminal intent. To do so, evidence was presented that Tseng knew or should have known that her reckless prescribing pattern was related to prior patient deaths but she continued in her course of conduct without regard for the well-being of her other patients.

This was different than the prosecution of Dr. Conrad Murray for the involuntary manslaughter death of pop-star icon Michael Jackson in 2011. In that case, the use of the intravenous anesthetic propofol was considered to be criminal negligence. The intravenous drug was intended for operating room use by a trained anesthesiologist, not as a sedative for insomnia to be administered by an internal medicine physician in a residential setting. Since the conduct caused one death with no similar prior acts, implied malice as a substitute for intent could not have been proven.



Larry Eisenberg has been a plaintiff personal injury and medical malpractice lawyer for over 30 years, and has litigated prescription drug overdose cases. His office is in Irvine, CA. He was president of OCTLA in 1993, is a member of ABOTA since 1996, a member of the Bar in California, NY, Mass. and Washington State, and received the OCTLA Medical Malpractice Trial Lawyer of the Year in 2007, as lead counsel in the UC Irvine Liver Transplant Litigation. www.lselaw.com



In the Tseng case, since there were multiple patient deaths linked to her conduct, this fact was instrumental in proving the criminal case beyond a reasonable doubt.

Civil Cases for Wrongful Death

The civil cases against Dr. Tseng proceeded as related matters in the courtroom of Judge Linda S. Marks in the Orange County Superior Court. Multiple wrongful death cases were filed against Dr. Tseng, Dr. Tu (her partner and husband), Advance Care AAA Medical Group and various defendant pharmacies that filled the illegal prescriptions. These cases have been settled on behalf of the families who lost loved ones. The common thread of these tragic deaths is that the victims were all young men generally between 20 and 30 years old. As one mother has said who lost her only son at 20 years old: "This is not a club that you want to join!"

With regard to a patient obtaining prescriptions from Dr. Tseng, the scenario proceeded as follows: The drug-seeking patient from South Orange County³ made an appointment to see Dr. Tseng at her clinic in Rowland Heights, CA, which was about 50 miles from where the patient lived. Upon explaining to Dr. Tseng their need for an opiate (such as Vicodin, Norco, Oxycontin or Opana) due to a prior athletic

or job-related injury, such as working in construction, Dr. Tseng was ready with her prescription pad poised. Without conducting a proper physical examination or any diagnostic testing whatsoever, she wrote the prescription for whatever the patient wanted. The quantity of the drugs were supposed to last for a 30-day period and after the patient paid cash for the visit, they made an appointment to be seen again the next month.

The patient then took what was actually an illegal prescription, since it was not generated for a legitimate medical purpose, to a retail pharmacy out of the area from where they lived to get it filled. Some pharmacists knew what was going on and refused to dispense the opiate drugs but many looked the other way and sold the drugs due to the profit margin. Under California law, simply because a patient presents a prescription signed by a doctor to a pharmacy does not absolve the pharmacist from their professional responsibility to inquire into the validity of the prescription concerning whether there was a legitimate medical need for the opiates. When a twenty-something, healthy-looking male, who resides 50 miles from the doctor's office, presents an opiate prescription to a pharmacy not near his home, this should be a red flag that something is awry and the pharmacist

should refuse to fill the prescription. Unfortunately, many retail pharmacies dispensed the drugs and accepted cash for the transactions. Insurance reimbursement plans were generally not involved, since they would have potentially questioned the ongoing use of opiates.

Further investigation has determined that Tseng's prescriptions have resulted in the diversion and street sale of pills to friends and acquaintances of Tseng's patients. Surviving patients have confirmed that the drug-seeking patients would pool their money due to the high cost of the specialized opiates, such as Opana, send one of them for a visit with Tseng, fill the prescriptions at a cooperating pharmacy and then divide the drugs among the participants in the cooperative venture.

These patients voluntarily sought out Dr. Tseng and received prescriptions for powerful and addictive opiates and scheduled drugs. The doctor wrote prescriptions for deadly combinations of opiates (such as Vicodin, Oxycontin, Norco and Opana), a benzodiazepine (Xanax) and a muscle relaxant (Soma). This was a recipe for disaster. The combination of these drugs causes respiratory depression to the extent that the patient can stop breathing and expire. These same patients who allegedly had chronic pain symptoms came back for repeat monthly visits and most paid cash to obtain prescription refills. This was alleged to be part and parcel of

Deaths from prescription drug overdoses have exceeded motor vehicle accidents as a leading cause of death in the U.S.

Dr. Tseng's contrived financial plan, to keep the patients addicted so they would return for follow-up visits and she could collect her fees on an ongoing basis. The prosecutor stated in the criminal trial that Tseng deposited approximately \$5 million in multiple bank accounts between about 2006 and 2010.

The various medical records of Dr. Tseng verified that the patients did not receive proper physical exams, diagnostic tests or x-rays and certainly did not receive a simple urine drug screen to confirm what

medications they were taking. They also did not receive informed consent explanations about the addictive nature of the drugs or that the dangerous drug interactions exacerbated their sedative effect and could cause respiratory depression and death. (Another example of the sedative effect of combining anxiety, pain medication and alcohol has been confirmed in the autopsy report regarding the death of singer Whitney Houston on Feb. 11, 2012.)

The wrongful death civil complaints that were filed on behalf of the families alleged medical malpractice for the professional negligence of Dr. Tseng which caused the prescription overdose deaths. The conduct was substantially below the standard of care and it was alleged that the prescriptions were illegal since they were prescribed without a legitimate medical purpose which is required by California law. Violations of the California Drug Dealer Liability Act were pled, which allowed the families to pursue anyone in the chain of distribution of the illegal narcotics. The argument was also advanced that the reckless conduct was in conscious disregard of the health and safety of the patients, which could support an award of punitive damages.

Specifically, the complaints included causes of action for medical negligence; violation of the Drug Dealer Liability Act (Calif. Health & Saf. Code § 11700), fraud, misrepresentation, and violation of the Consumers Legal Remedies Act (Calif. Civ. Code § 1750). The basis of liability against the pharmacy defendants was alleged under California Health and Safety Code § 11153(a) which states: "The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription."

The following are examples of individual cases that were pursued against Dr. Tseng:

Vu Nguyen died at age 28:

Mr. Vu Nguyen from Lake Forest saw Dr. Tseng for 7 visits from August 9, 2008 through February 7, 2009. Dr. Tseng prescribed Opana, Xanax and Vicodin allegedly for back pain, neck pain and anxiety. The patient had his last visit with Dr. Tseng on February 7, 2009, and died on March 2, 2009, at 28 years old due to the combined

intoxication effects of Opana and Xanax. The facts of this case formed the basis of one of the counts of second-degree murder.

Josh C. died at age 24:

Unbeknownst to Tseng's patients, they were seeking medical treatment and scheduled prescription drugs from a practitioner who was under investigation by the DEA and Medical Board since 2008. One of the cases involved 24 year-old Josh C. from Laguna Hills who saw Tseng for 10 visits in 2009. Tseng prescribed Opana, Oxycontin, Norco, Morphine, Xanax and Soma at different times for alleged chronic back pain related to a motorcycle accident. Tragically, Josh died on June 1, 2009, from drug intoxication 5 days after receiving his last prescription from Tseng. This death was investigated by the Orange County Coroner and the DEA got involved when 7 prescription bottles with Tseng's name as the prescriber were found in his bedroom. An affidavit regarding these facts, signed by DEA Special Agent Robert Harkins was submitted to the U.S. District Court in Los Angeles as the basis for the warrant to search the medical offices of Dr. Tseng. The DEA raided her medical office and the media reports regarding the raid confirmed Tseng was under investigation. Mr. Harkins also testified in the criminal trial.

Joe G. died at age 26:

In another case, Joe G. from Huntington Beach saw Dr. Tseng for 10 visits during which she prescribed Opana, Dilaudid, Oxycodone, Xanax and Soma for alleged chronic back pain. Joe had attended University of California, Davis where he played rugby. He returned to Tseng after going through rehab and being off opiates for about six months. Instead of exploring the fact that he had been drug-free, which is evidence that the alleged need for strong opiates for pain relief was *not* absolutely necessary, the medical records confirm that Tseng freely put him back on opiates without considering the adverse medical consequences of her conduct. After his tolerance for the drugs had decreased from weaning off them, she prescribed improper dosage levels of Oxycodone, Soma and Xanax. This was clearly not proper medical treatment and the patient died 2 days later on August 26, 2009, at age 26, from drug intoxication.

Riley R. died at age 20:

Another patient was Riley R. from Laguna Niguel, California who first saw Dr. Tseng at age 18, allegedly for chronic pain and anxiety from a high school football injury and working on construction jobs. It is inconceivable that an osteopath family practitioner would prescribe Opana, Norco, Xanax and Soma to an 18 year-old. Opana (oxymorphone) is an extremely powerful and addictive semi-synthetic opiate with a chemical formula similar to heroin. Opana is prescribed to terminal cancer patients with intractable pain. Most pain management specialists only use it as a last resort and many pharmacies will not stock it due to its addictive nature, high cost and potential for abuse. Riley saw Dr. Tseng for 13 monthly visits and she perpetuated his addiction physically and mentally. He entered drug rehab at age 19 but relapsed and died on December 2, 2010, at age 20, from the combined intoxication effects of Opana and Xanax.

Medical Expert Witness Analysis

The board-certified pain management physician retained on behalf of the families reviewed all of the medical records and timeline chronologies of the treatment of the patients who died. Tseng's computerized medical records made it appear that the patients were receiving treatment for chronic pain. However, the documented medical histories were inadequate, examinations were allegedly performed without proper pain assessments, no radiology or diagnostic tests were ordered and very few patients had physical therapy for their "chronic pain." Tseng certainly did *not* adhere to the guidelines for prescribing opiates and controlled substances which are in effect in California. The rationale behind these guidelines is to improve the prescribing practices of physicians for effective pain management, as well as to prevent abuse and diversion of the drugs.

Addiction medicine physicians that deal with these medical issues explain that the craving for these drugs is so powerful that the patients will say and do almost anything to feed the disease of addiction. It is too easy to blame the victims when the trained medical professional should know better. Dr. Tseng has said it was

the patient's fault or that of their parents and families. Her failure to acknowledge wrongdoing or her attempt to deflect culpability to the families undoubtedly contributed to her downfall. Her conduct clearly perpetuated the ongoing addiction of her patients.

The California CURES System

In California, the "CURES" system (Controlled Substance Utilization Review and Evaluation System) is a statewide database which monitors and compiles all prescriptions written for Schedule II, III and IV pharmaceutical drugs. Physicians and pharmacies are required to report all such prescriptions to the California Department of Justice so the database is updated on a continual basis. The CURES system was designed to investigate drug abuse and prescription fraud and expose physicians who engage in improper prescribing practices. CURES is available for legitimate prescribing doctors to obtain the prescription history of patients to determine if they were "doctor-shopping" to stockpile opiates and scheduled drugs. However, it is currently not mandatory for a doctor or pharmacist to access the CURES system to obtain a prescription drug history on a patient before prescribing controlled substances or dispensing the drugs to the patient. Various consumer groups and CAOC are sponsoring legislation, SB 482 (Lara), to make it mandatory that doctors use the CURES database.

Tseng also did *not* access "CURES" records for her patients, since she was only interested in writing prescriptions for opiates and scheduled drugs without regard to whether the patients actually needed them for a legitimate pain condition. It became apparent that Tseng was engaged in a manipulative scheme to "sell" illegal prescriptions for drugs.

Conclusion

The portrayal of patients dying from prescription drug overdoses is tragic. In her victim impact statement recently given to the Los Angeles Criminal Court, Ms. Samantha Nguyen, the sister of decedent Vu Nguyen, addressed the court and explained how the loss of her brother was "a deep gaping hole that never heals." Samantha stated in court that when she asked her 8-year-old son about his Uncle Vu, he cried, hugged her and said: "How could she (Dr. Tseng) not know? How could she not know that those drugs could kill, isn't she a doctor?"

The medical community has been unable to successfully curtail the contemptible conduct of doctors and others who provide opiates and other dangerous drugs to patients without a legitimate medical purpose. Although the American Medical Association (AMA) has said they agree with the Centers for Disease Control (CDC) that illegal prescribing practices need to be stopped, it is apparent that lip service alone cannot adequately police

the medical profession. As a result, the civil and criminal justice system will respond accordingly to protect the legal rights of the victims and their families. Unfortunately, for those patients who died, retribution as a result of the conviction of Dr. Lisa Tseng comes too late – long after they made the ultimate sacrifice. ■

The author would like to thank Janis Hughes and Tammy Katz for their assistance in the preparation and editing of this article.

¹ John Niedermann was the Deputy District Attorney in the L.A. Major Narcotics Division who prosecuted the Tseng case. He was assisted by Deputy District Attorney Grace Rai. Tseng was found guilty of 23 counts, including 3 counts of second-degree murder, 19 counts of prescribing unlawful controlled substances and 1 count of obtaining a controlled substance by fraud (Case No. BA394495). On February 5, 2016, Lisa Tseng was sentenced by Judge George Lomeli to 30 years to life incarceration with an additional 15 years to run concurrently.

² The parents of Joey Rovero, April and Joseph Rovero, founded the National Coalition Against Prescription Drug Abuse to increase awareness of the dangers of prescription drug abuse through education and legislative action. www.NCAPDA.org

³ Jodi Barber's 19-year-old son died from a prescription drug overdose in South Orange County. Along with Christine Brant, she produced a documentary film, "Overtaken," which has been shown to thousands of students to educate them about prescription drug addiction. www.OneChoiceCanDestroy.com