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JOURNAL SENTINEL WATCHDOG REPORT

Legal drugs, lethal access

Improperly prescribed pain medicines result in deaths, little discipline for doctors

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Daryl Collie lived with pain most of his life.

The Milwaukee man, who worked as a cook and waiter, fractured a vertebra in a car accident when he was a teenager and never fully recovered.

In April 2005, Daryl's father, Alfred Collie, found his 35-year-old son dead. Near Daryl Collie's body were bottles for seven kinds of pills prescribed by several doctors, according to the medical examiner's report.

Daryl Collie overdosed on a combination of painkillers oxycodone and diazepam, the report says. Daryl Collie's other prescriptions included more painkillers, anti-depressants and anti-anxiety drugs. He also was drinking vodka shortly before he died.

Alfred Collie said he knew his son took prescription pain medications but had no idea Daryl Collie was abusing them.

"I figured he's got a doctor that he trusts and relies on," he said.

What he had, though, was a host of doctors with troubled pasts.

Daryl Collie's primary doctor had struggled with addiction herself and would later go to prison for selling prescriptions in a department store. Another doctor was flagged by investigators for prescribing huge amounts of addictive painkillers. A third had been targeted by law enforcement for his prescription-writing more than a decade before.

Authorities agree there is a fine line between the legitimate treatment of pain and improperly prescribing drugs. When doctors cross it, they almost always avoid criminal charges and often keep their medical licenses. Yet for their patients, the consequences can be grave: prison, addiction and even death.

"What defines a physician is that they're acting solely for the benefit of the patient," said Scott Fishman, president of the American Academy of Pain Medicine. "When that is no longer the case, they're no longer a doctor. They're a drug dealer or a criminal."

Unlike other street drugs, addictive narcotics such as OxyContin can hit the streets two ways: either someone steals them or gets a prescription, said Milwaukee police Capt. Timothy Burkee of the vice control division.

"These are not things that Bubba can make in the garage or basement," he said.

OxyContin is a painkiller that addicts snort for a heroin-like high. It is meant to be absorbed by the body over 12 hours. Crushing and snorting it delivers all of the medication at once. Its generic equivalent, oxycodone, is also addictive but has a lower street value.

In Milwaukee, authorities say they saw abuse of the drugs spike about five years ago. Prescription painkillers have been in the news again lately, with the revelation that actor Heath Ledger died in January of an accidental overdose of prescription drugs, including oxycodone and diazepam.

Three of the doctors who wrote prescriptions for Daryl Collie - Robin Ferron, Marc L. Smith and Robert J. Wetzler - have been repeatedly sanctioned by the state's Medical Examining Board in connection with other cases. Only Ferron has lost her license.

Michael Berndt, attorney supervisor in the enforcement division at the state Department of Regulation and Licensing, said that when a doctor practices badly, the board's goal is rehabilitation, not punishment.

"Poor medical practice doesn't mean a criminal violation," he said.

Rarely prosecuted

Area physicians are almost never criminally convicted for incorrectly prescribing OxyContin and other potentially dangerous drugs.

In fact, they're almost never prosecuted. Over the past seven years, the Milwaukee County district attorney's office has not charged a single doctor with the crime, according to Assistant District Attorney Mark Sanders.

The U.S. attorney's office for the Eastern District of Wisconsin, which covers 28 counties including Milwaukee, has investigated three cases since 2000. Only one resulted in a conviction. Another doctor paid civil penalties but avoided criminal charges. A third was charged but found incompetent to stand trial.

"Trying to balance the appropriate treatment of pain versus the damage that can be done by addiction is hard," Sanders said. "These cases require tremendous amounts of time and resources."

Ferron, 51, was convicted on a federal drug dealing charge in December 2006 and is serving a three-year prison term. Court records indicate that she continued to see "numerous" patients after being sanctioned by the medical board. Just two are named in the records. Daryl Collie is not one of them, but records indicate that she wrote him more than 20 prescriptions for painkillers, anti-depressants and anti-anxiety drugs over an eight-month period shortly before his death.

"He was my life," said Alfred Collie, who raised his son alone from the time Daryl Collie was 12. Back then, the two played baseball and went to high school football games. As Daryl Collie got older, he often put his culinary skills to work for his father, whipping up stuffed hamburgers, barbecued chicken and homemade pizza.

"I'm fighting to stay alive now that he's gone," Alfred Collie said.

Ferron declined to be interviewed. Her attorney, Randal Arnold, called his client "a very capable and caring doctor who should be allowed to return to practice when she can safely do so."

In 2003, Ferron, who had a long history of substance abuse, was convicted of bank fraud. She was sentenced to six months in prison but was allowed to keep her license, according to medical board and court records. When Ferron was released, the board allowed her to keep treating patients as long as she continued with substance-abuse treatment and screenings and regularly reported her progress. Within three months, she had failed to live up to the conditions, and her license was suspended in December 2004.

After that, Ferron began working with another doctor, Jerry Yee of Wauwatosa, according to court records. At first, Ferron consulted with Yee, and he wrote her patients prescriptions for medications such as OxyContin, Percocet and Vicodin. Yee told authorities he grew concerned about the large numbers of patients and prescriptions and told Ferron he could no longer work with her.

Even so, Yee gave her a pad of signed, blank prescriptions, he told police. He said he did it because Ferron complained that her patients would suffer withdrawal.

Assistant U.S. Attorney Matt Jacobs, who prosecuted Ferron, said he was able to make the case largely because of what happened next: On Dec. 16, 2005, Ferron was captured on surveillance video placing some of those prescriptions, which she wrote for OxyContin, on a stack of shirts at a Kohl's department store in Brookfield. A man took the prescriptions and handed her a wad of cash.

Yee is under board investigation in connection with Ferron's case, his attorney confirmed. It's not the first time. He was sanctioned by the medical board for improper prescribing in 1990.

Yee declined to comment. The attorney, Pat Knight, said many patients can't afford pain specialists, which leaves family practitioners such as Yee struggling to navigate a complex, new field.

"You get a lot of regular neighborhood practitioners that are being held to standards that didn't exist not long ago," he said.

12th victim

Nationwide, prescription painkillers such as oxycodone are more likely to cause overdose deaths than heroin or cocaine, according to a study released last year by the federal Centers for Disease Control and Prevention.

But the traditional methods used to investigate drug crimes are ineffective when it comes to prescription drugs - even when doctors can be linked to fatal overdoses.

Street drug dealers often get busted because they can't explain where their money came from. In prescription cases, however, doctors are able to charge for office visits, which enables them to account for large amounts of cash. Doctors can claim they trusted patients' reports of pain and didn't know they were addicted or faking, claims that would be ludicrous if uttered by a crack dealer.

There also are no hard-and-fast rules for how much of a certain drug is too much for a given patient, because each person's body has its own way of metabolizing the chemicals, said the American Academy of Pain Medicine's Fishman, a physician.

Most people will not become addicted to painkillers, but they might need more of the drugs over time to allow them to function, he said.

"If people are abusing these drugs, they don't function," he said. "If they use too much, they get side effects. If someone comes into my office and they're sleepy and unable to walk and they say, 'This is the best I've ever felt,' this is not treatment success."

Many doctors simply have not been well-educated on how to manage pain, so they make mistakes, he said.

To differentiate between a mistake and a crime, prosecutors have to demonstrate that a doctor's actions fall outside legitimate medical practice, which is a difficult standard to meet, Jacobs said.

Federal authorities were unable to meet that standard during an investigation of Richard I.H. Wang, a clinical pharmacology specialist linked to 11 overdose deaths in Milwaukee and Waukesha counties between June 2000 and April 2004, according to a search warrant. Six were Wang's patients. Authorities said some of those patients were selling or sharing pills, resulting in five more deaths.

Before the federal investigation started in April 2004, the state's Medical Examining Board had dismissed five complaints against Wang without discipline, according to Berndt, of the Department of Regulation and Licensing. A pharmacist also said he had called the state about 10 times over the years with concerns

about Wang's ever-increasing numbers of prescriptions.

At the beginning of the three-year investigation, Wang agreed to stop prescribing certain drugs, according to court records. He kept his license.

Onetime Milwaukee mayoral candidate Sandy Folaron and her husband, John, consider their son to be Wang's 12th victim.

John R. "JR" Folaron committed suicide in June 2004. JR Folaron was a motivated kid and an Eagle Scout, according to his parents. As a teenager, though, he rebelled, dropping out of high school and getting a job in construction. A knee injury at work led to surgery. After that, he sought pain treatment from Wang.

At one point, Wang was prescribing between 300 and 400 pills to JR Folaron each month, his mother said. Her son had lost a lot of weight and looked sick. He reassured his parents, saying he was under a doctor's care.

"You grow up to believe you need to respect people in these professions," Sandy Folaron said. "Then you realize they're just as crazy as the next person. They're not without fault by a long shot."

By the time Wang lost prescribing privileges, JR Folaron was addicted. His mother said the doctor did nothing to help him. With the painkillers cut off, JR Folaron started using heroin. Within a month, he had killed himself by drinking antifreeze. He was 24. In writings, he blamed his addiction for his inability to go on.

JR Folaron's parents complained to federal and state authorities after his death, while Wang already was under investigation in the 11 other cases.

In the end, Wang wasn't criminally charged with improperly prescribing drugs to anyone. The federal investigation against him ended in March when he agreed to repay the federal government \$509,000 in overbilled charges to Medicare and Medicaid and to give up his license.

Wang, 83, did not return telephone calls for this report. At the time of the settlement, the doctor said he had planned to retire anyway and blamed patients for selling and abusing their medications without his knowledge.

Wang's case is typical in that it took years to investigate, yet didn't result in criminal charges.

That's a source of frustration for the Milwaukee police's Burkee. Charging more doctors, he said, would stop others from writing prescriptions for painkillers likely to end up on the black market.

"But those are decisions that prosecutors make," he said. "Not police officers."

Keeping their licenses

The Medical Examining Board has allowed several doctors to keep their licenses despite repeated investigations of inappropriately prescribed drugs - even when patients were harmed.

Marc L. Smith, a Milwaukee osteopath who wrote Daryl Collie at least two prescriptions in 2005, first caught the attention of the board and of law enforcement in 1993.

An undercover police officer posing as an exotic dancer went to his office and asked for the anti-anxiety drug Xanax. She told the doctor she was healthy but needed the pills because of her late nights on the job, according to medical board records. Smith gave her a prescription for 60 pills.

The woman returned to his office 2 1/2 weeks later, saying the pills were gone because she had used some of them to come down from a cocaine high and had shared some with a friend.

Smith wrote a prescription for 90 more pills, records say.

"There has to be a legitimate medical reason to prescribe something," said James F. Bohn, assistant special agent in charge of the Drug Enforcement Administration's Milwaukee office. "If there's not a medical reason, that's cause for a criminal investigation."

But the case against Smith stalled when the undercover police officer returned a third time, and he said he could no longer treat her, according to records. He was not charged.

A 1997 incident involving Smith's then-girlfriend, whom he met at the clinic where they both worked, triggered another board investigation. Smith and other doctors gave the woman numerous prescriptions for painkillers, which she filled at different pharmacies, records say.

In October 1997, Smith took the woman to a hospital emergency room. At the time, the 5-foot-3-inch woman, unidentified in board records, weighed 91 pounds. Smith did not tell doctors about the woman's "history of chronic drug abuse" or a previous emergency room visit, medical board records show. She died of complications from pneumonia eight days later.

In February 1999, the medical board suspended Smith's license for 30 days and imposed several other sanctions based in part on those two cases. The board also determined that Smith had improperly prescribed pain medication to other patients and had trouble diagnosing certain conditions.

By 2002, Smith was back to the same sort of prescribing that got him in earlier trouble, according to board records. He repeatedly prescribed Norco (a painkiller similar to Vicodin) and other drugs to a female patient who complained of a different problem almost every time she came to his office. First it was an old car accident, then another car accident. Anxiety and a fall also made the list. In some cases, Smith prescribed higher doses than he recorded on the patient's chart. He also did not adequately record details of her pain, treatments or medical history, the board found.

In 2004, Smith prescribed OxyContin to a man, the man's twin brother and the brother's wife all within the same month, according to board records. Smith doubled the man's dose after a week and increased the brother's dose after two days. Over a period of months, Smith prescribed ever-increasing dosages to the three, according to medical board records.

This time, the medical board reprimanded Smith and substantially limited his ability to prescribe opiates. The restrictions, which were handed down along with several others in December 2006, remain in effect, according to board records. Smith was among the doctors who wrote prescriptions for Daryl Collie the previous

year, but no claims of wrongdoing have been made against him in that case.

Smith did not return telephone calls.

Last year, Robert J. Wetzler, who works with Smith and who also wrote prescriptions for Daryl Collie, gave Smith signed blank prescriptions, which Smith used to prescribe opiates and other drugs, according to medical board records.

Some discipline

It wasn't the first time Wetzler drew the board's attention. He was disciplined in 1991 for inappropriately prescribing the depressant Quaalude to a female patient, according to records. The board also limited his license to practice and to prescribe controlled substances. The limitations were removed in 1998.

A medical board review of Wetzler's prescriptions revealed that during April, he was the second-largest prescriber of oxycodone products in a five-state area that includes Wisconsin. In May, Wetzler was Wisconsin's top prescriber of oxycodone products and of methadone, a painkiller used to wean addicts off other drugs. The findings were based on data from 80% of the nation's pharmacies.

Oxycodone is often used to treat terminal cancer patients, who need strong pain relief and for whom addiction is not a concern.

Wetzler's prescriptions raised red flags with the Medical Examining Board because he does not treat a lot of cancer patients or work in a hospice program. He also does not have any specialized training in pain medicine, according to board records.

The fact that more than 80% of his May prescriptions of oxycodone and methadone were paid for with cash also raised questions with the board, because prescriptions for those drugs are almost always paid for through insurance, according to board records.

Fearing for patients' safety, the board suspended Wetzler's license immediately for 30 days in July and opened an investigation.

In an interview, Wetzler, a former state medical society Physician of the Year, said he came out of retirement to open Milwaukee's Riverwest Clinic a few years ago because there were many uninsured people in the area who needed care.

Wetzler said he has learned a lot about how to monitor patients. The clinic counts patients' pills, communicates with pharmacies and conducts drug tests, he said. He employs a full-time staffer to keep tabs on patients and has dismissed hundreds of patients for not following the rules, he said.

His problems with the board arose primarily due to two patients who were getting prescriptions from several other doctors without his knowledge, he said.

"When somebody overuses medicine or uses it inappropriately, that is a medical problem. Maybe they're still in pain. Maybe they don't know what they're doing," he said. "When somebody puts in a false prescription, doctor shops, or sells prescriptions, that's a legal problem, and we are quick to turn these people over to the cops."

Wetzler said he initially referred Daryl Collie to Ferron for pain management. At the time, he was unaware of her problems. When Ferron lost her license, Daryl Collie returned to the Riverwest Clinic for a short time, Wetzler said. Records confirm that Daryl Collie received most of his prescriptions from Ferron.

Wetzler contended that Daryl Collie's abuse of alcohol was a big part of the reason he died.

In January 2007, the medical board disciplined Wetzler in connection with Daryl Collie, but not for improper prescribing. Instead, the board found that Wetzler did not document Daryl Collie's care adequately and ordered the doctor to take a course in patient-records maintenance.

By December, Wetzler had been disciplined again, this time for prescribing medications to his wife and sons without keeping sufficient records. In one case, his wife ended up in intensive care because an injection administered by her husband interacted with pain medications other doctors had prescribed for her and with alcohol, according to board records.

As a result, Wetzler's license was limited again. He was barred from treating family members, except in an emergency. Like Smith, he was ordered to submit to a skills evaluation and, if necessary, get continuing medical education. The board also ordered Wetzler to pass certain exams and to work under the supervision of a professional mentor.

Under another part of the agreement, Wetzler has stopped prescribing OxyContin and other drugs like it.

That's not enough for Alfred Collie, who has written to everyone from the police to the governor, trying to get Wetzler criminally prosecuted for giving his son a prescription for painkillers two weeks before Daryl Collie died in 2005.

"It's not just Daryl, it's a lot of other people's loved ones," Alfred Collie said. "We can't bring Daryl back. We've lost him. But we can save other children."

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