

# Study Finds Few Pain Doctors Face Criminal Prosecutions

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A new study has found that doctors are rarely criminally prosecuted or sanctioned in connection with the prescribing of narcotic painkillers.

The study, published this month in the journal *Pain Medicine*, found that 725 doctors, or about 0.1 percent of practicing physicians, had been prosecuted or sanctioned by state medical boards between 1998 and 2006 on charges arising from illegally or improperly prescribing narcotics. Of that group, 25 doctors specialized in pain treatment.

"The widely publicized chilling effect of physician prosecution on physicians concerned with legal scrutiny over prescribing opioids appears disproportionate to the relatively few cases," the study reported.

The study was undertaken by the Center for Practical Bioethics in Kansas City, Mo., the Federation of State Medical Boards and the National Association of State Attorneys General.

The study's authors acknowledged that their review, while extensive, did not account for prosecutions against doctors brought by state and local law enforcement officials.

Also, one of the report's authors, Dr. Scott M. Fishman, a pain specialist, said that the "chilling effect" on doctors involved not just legal cases but also visits from law enforcement agencies like the Drug Enforcement Administration.

"One has to temper the interpretation of the data with all the other phenomenon of how physicians perceive the heat of regulators," said Dr. Fishman, a professor at the University of California, Davis. "Most of us have had visits from the D.E.A., and I can tell you that it can be a scary thing."

The question of how doctors perceive their legal vulnerabilities when prescribing narcotics has consequences because studies have long suggested that doctors, fearful of drawing legal scrutiny, may not adequately treat patients.

In recent years, the issue has become amplified because of several highly publicized prosecutions of doctors accused of selling narcotics like OxyContin, Percocet and Vicodin, or recklessly prescribing them. Some news accounts about those cases have also contended that they were part of a broader, national crackdown against doctors who treat pain patients.

Myra Christopher, the president of the Center of Practical Bioethics, a group that supports improved patient pain care, said the purpose of the study was to "discern the facts from the folklore."

Robert T. Libby, the author of "The Criminalization of Medicine: America's War on Doctors" (Praeger Publishers, 2007), said he believed that the study was seriously flawed and that pain doctors were subject to repeated harassment.

"They want to say this is not real," said Mr. Libby, who is a professor of political science at the University of North Florida in Jacksonville. "They are minimizing it."

Dr. Fishman said that the study, despite his reservations about how broadly it could be interpreted, was not advocating any point of view.

"We looked at what was happening, and that is what we found," he said.

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