January 30, 2012
HUFF POST POLITICS
THE INTERNET NEWSPAPER: NEWS BLOGS VIDEO COMMUNITY

The War Over Prescription Painkillers

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01/29/2012

Over the last few months, the Centers for Disease Control (CDC), the Drug Enforcement Administration (DEA), and several other government agencies have been issuing some alarming reports about abuse of prescription painkillers, and what the government says has been a dramatic rise in overdose deaths. These reports, along with another recent report by the journalism non-profit ProPublica, have spurred calls for tighter policing of painkillers, instituting digital databases to monitor pain patients and their physicians, and more aggressive tactics to prevent drug diversion.

There's no question that prescriptions for opioid painkillers like Oxycontin and Percocet have soared in recent years. It's also clear that there are some rogue doctors and "pill mills" who unscrupulously hand out prescriptions, sometimes to patients who shouldn't get them, sometimes to drug addicts and drug dealers pretending to be pain patients. But it's also far from certain that the painkiller abuse and overdoses are as dire as the government is making it out to be. And to the extent that there is a problem, it's due more to a decade of aggressive policing, obstinate federal law enforcement agencies, and the encroachment of law enforcement into the practice of medicine than lax government oversight. The DEA in particular has been scaring reputable doctors away from pain management since the late 1990s. People who suffer from chronic pain simply can't find doctors willing to treat them over the long term. The unscrupulous doctors and pill mills in the headlines have sprung up to fill the void.

The issue takes on a particular resonance as the country turns to Florida for next week's Republican primary. Florida was the site of the first big painkiller panic in the early 2000s, and the state has also played a central role in the most recent flare-up. There has been little discussion of the issue in the 2012 presidential campaign. But perhaps there should be. It's a topic that touches on important issues and trends like Medicare, Medicaid and health care; the aging U.S. population; the drug war; and, pain patients would argue, the basic human rights of a large and growing portion of the public.

The Problem of Chronic Pain

Chronic pain is different from short-term or end-of-life pain. It can persist for years, even after the associated injury or condition has gone away. For some patients it can be

burdensome, for others it can be debilitating. Chronic pain can also cause depression, anxiety, sleep disorders, and affect decision-making. Because pain is more of a symptom than a disease, it can't really be diagnosed, so it's difficult to come up with a precise number of people affected. But in 1999, the Society for Neuroscience estimated that as many as 100 million Americans will suffer from some sort of chronic pain. The National Center for Health Statistics puts the number closer to 75 million.

Despite the recent headlines about the rise in sales of prescription painkillers, chronic pain is still significantly *under*-treated in America. There are a number of reasons why. For one, there's no diagnostic test to diagnose pain, so doctors must rely on patient descriptions of what they're feeling. That can be tricky, because tolerance for pain varies widely from person to person. Culturally, pain has also long been viewed as something we encounter and endure as part of the human condition. In many religions, noble suffering is considered pious. Pain treatment is also a relatively new medical specialty; it didn't have its own medical society until the early 1980s.

But the biggest barrier to effective pain treatment continues to be bad public policy, much of it driven by the war on drugs. Opioids -- morphine, oxycodone, methadone, and other drugs derived from the opium plant (or synthetically structured to mimic it) -- are the most effective way to treat severe and chronic pain. Emerging (but still controversial) treatments like long-term, high-dose opioid therapy have shown particular promise with chronic pain. Just this month, an article in the journal *Science* described another promising new therapy, in which large doses of the drugs delivered over a short period of time, shortly after an injury, may help prevent chronic pain from developing at all.

But it's also true that opioids can be abused. The potential for abuse has attached to opioids a social and cultural stigma that can make doctors reluctant to prescribe them, and patients reluctant to take them, even in end-of-life care. But pain patients and their advocates say the bigger problem is that drug control has taken priority over ensuring access to effective treatment. To be sure, there is a divide in the medical community over the effectiveness of long-term, high-dose therapy. But what ought to be a research-driven debate among medical professionals has been corrupted by policies aimed at preventing addicts and drug pushers from obtaining painkillers, not what's in the best interest of pain patients. Police and prosecutors now dictate medical policy.

Birth of a Crackdown

To put the current state of the painkiller debate into the proper perspective, it's helpful to look back at how we got here.

In the mid-to-late 1990s, some media outlets were taking note of the frustrations of pain patients. In 1997, both *Time* and *U.S. News & World Report* ran articles about the stigmas attached to opioid narcotics, and the plight of patients who couldn't find doctors to treat them. But within just a few years, law enforcement reports about the new prescription-legal "hillbilly heroin" drugs began to circulate. National publications like *Newsweek* ran

ominous articles about "OxyBabies," which read much like the now-debunked crack baby stories of the 1980s.

In 2003, the Orlando *Sentinel* ran a five-part series titled "OxyContin Under Fire." It wasn't the first article about outbreaks of Oxycontin addiction, but it was likely the most influential. Reporter Doris Bloodworth profiled a number of people she portrayed as "accidental addicts" who suffered fatal overdoses, suicides, and broken families. As Ronald Libby writes in the 2005 Cato Institute paper "Treating Doctors as Drug Dealers: The DEA's War on Prescription Painkillers," the *Sentinel* series had an enormous impact.* It inspired congressional hearings, protests, and promises from politicians to combat this new epidemic. James McDonough, Florida's chief drug enforcement officer, boasted to Congress a month after the *Sentinel* series that his office had taken "aggressive action" against misbehaving doctors, arresting four since the series ran. Even the venerable Government Accounting Office issued a report, which also cited the *Sentinel's* data.

But in 2004, the *Sentinel* investigation imploded. The anecdotes and numbers the paper used to lay out the alleged epidemic were riddled with errors. Several of the people Bloodworth claimed to be accidental addicts in fact had a long history of drug abuse. In his paper, Libby lays otu how the the *Sentinel's* overdose statistics were also misguided. Where the paper claimed 570 Oxycontin-related deaths in 2000-2001, there were actually only 71. In February 2004, the *Sentinel* retracted the entire "OxyContin Under Fire" series, and issued a front-page correction. Bloodworth resigned, and the two editors who worked on her series were reassigned.

But the *Sentinel* series just amplified similar scare stories, inspiring national outrage and promises to implement new policies. Libby found that from 2001 to 2004, for example, the DEA on its own launched 400 investigations with its "OxyContin Action Plan," leading to 600 arrests. Medical professionals made up 60 percent of those arrests. The agency also set up hundreds of local task forces across the country, which carried out 9,000 investigations in 1999 alone. In 2001, the DEA also trained more than 64,000 state and local law enforcement personnel in how to fight prescription drug diversion.

Those efforts, which continue today, have cast a chill over the treatment of pain. Candor in the doctor-patient relationship, a critical component of any medical treatment, is especially important in treating pain. Doctors need to develop a feel for each patient's tolerance for pain, as well as for how they're reacting to the drugs and dosages they're taking. The high-profile investigations and prosecutions of doctors have undermined that relationship. Law enforcement agencies send undercover agents and informants into doctors' offices to lure suspected physicians into writing bad prescriptions. Doctors have then been conditioned to be suspicious of patients, to see them as potential addicts or drug dealers. Patients have been conditioned to downplay their pain so they don't appear desperate for narcotics, as an addict might.

The high-profile prosecution of Virginia pain specialist William Hurwitz is a good example. Federal investigators found that of Hurwitz's hundreds of patients, 15 had

resold the the drugs he prescribed to them. There was no evidence that Hurwitz was complicit in or knew about the sales. At worst, he was duped by a small percentage of his patients. But instead of working with Hurwitz to catch the dealers posing as patients, investigators cut bargains with the dealers to implicate Hurwitz. Hurwitz was eventually convicted on 15 counts of distributing narcotics. In 2007, U.S. District Judge Leonie M. Brinkema sentenced Hurwitz to 57 months in prison, far less than what prosecutors were asking. Brinkema acknowledged that Hurwitz was a well-intentioned doctor who had made some mistakes, not the drug pusher prosecutors portrayed him to be. Brinkema added, "An increasing body of respectable medical literature and expertise supports those types of high-dosage, opioid medications," and that despite his mistakes, Hurwitz had saved many of his patients' lives.

As more doctors drop out or are forced out of pain treatment, pain patients grow more desperate. Doctors aren't permitted to post-date painkiller prescriptions, and patients can't get refills until their prescription runs out. So they may horde pills when they can, or seek out multiple doctors, often without telling one doctor that they're seeing others. Perversely, this also makes the patients look more like drug addicts, both in the eyes of law enforcement and the doctors and pharmacists who have bought the government line.

One such patient was Richard Paey, a paraplegic and multiple sclerosis patient who took high-doses of opioids to treat chronic pain brought on by a car accident, a botched back surgery, and his illness. When Paey and his wife moved from New Jersey to Florida in the 1990s, he was unable to find a doctor willing to administer his treatment. Depending on who you believe, Paey's New Jersey doctor either illegally wrote him extra prescriptions, or Paey illegally forged prescriptions himself, but under either scenario, even Paey's prosecutor conceded Paey wasn't selling or distributing the drugs. A pharmacist eventually tipped authorities off to the large quantities of drugs Paey was buying. Paey's home was raided by a SWAT team, he was arrested, jailed, and under Florida drug laws, charged and convicted of drug distribution, based solely on the quantity of pills in his possession. In 2004 he was sentenced to 25 years in prison, effectively a life sentence for someone in his condition. When Paey told his story to John TIerney of the *New York Times*, he was moved to a higher-security prison, further away from his family, and was put into solitary confinement. Florida Gov. Charlie Crist pardoned Paey in 2007.

Prosecutors claimed that no legitimate pain patient could possibly need the amount of medication Paey was taking. But once Paey was in prison, the state of Florida treated him with the same class of painkillers it put him in prison for possessing, and at the same or higher doses. "It became a comedy of bureaucracies," Paey told me in a 2007 interview. "One agency prosecutes me for taking too much medication... Then I get to prison, and the doctors examine my records and my medical history, and they decide that as doctors, they have to give me this medication... It raised a red flag in many peoples' minds that something strange was going on, here."

(This is the first of a three-part series. Coming in Part Two: The New Painkiller Panic.)

*(*Disclosure: I commissioned and edited Libby's paper while working as a policy analyst for Cato. Neither Purdue Pharma nor any other pharmaceutical company contributed to the commission, publication, funding, or promotion of the paper.)*