

Malpractice or Murder? How Law Enforcement Chooses to Prosecute Doctors



By Lila Abassi — November 10, 2017



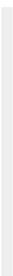
Criminal doctor [1]

In recent days the cases of two different doctors have made headlines having been charged with the murders of patients for whom they prescribed opioids . It was determined that these physicians bore responsibility for opioid overdoses resulting in death. It seems extreme to actually charge a doctor with murder who actually did not physically kill someone. The following is what I have found to help understand how murder charges are brought about.

Please also bear in mind that physicians are not the only ones with prescribing power, nurse practitioners (NPs) and physician's assistants (PAs) may also prescribe narcotics. When I refer to doctors or physicians, it is for the purpose of keeping it simple, it in no way reflects any belief that doctors alone are responsible for high volume prescribing of opioids.

Without getting too caught up in the politics of it all, I was curious to find out what criteria are used by law enforcement to determine whether a doctor is guilty of malpractice - a civil offense - versus murder, a criminal offense. In this article, I may use murder interchangeably with homicide, though legally, they have different meanings.

According to an [article](#) [2] in NBC News:



“A DEA official said that to tie deaths to a doctor, investigators have to gather evidence to show that the drug ingested before they overdosed came from the defendant. That can include witnesses who saw the victim take pills from a bottle with the doctor's name and toxicology reports showing the concentration of the drug in the victim's system lines up with the dosage of pills missing from the bottle, the official said.”

Under normal circumstances, if a physician's actions result in a patient's death they are handled as a civil matter. The doctor did not act with the requisite “intent” [3] or brazen recklessness which would qualify the action as criminal behavior. As an example, for a doctor to be charged with murder, she would have to have been acting with intent to kill the patient - a motive needs to be established.

A motive, however, is not necessary for an act to constitute murder. If a doctor has behaved with wanton disregard for the patient's safety resulting in death or serious injury this would be sufficient to consider criminal charges. These cases are rare, but still do happen - as we see in the cases of doctors who have been involved in pill mill operations.

An instance where an action could be considered criminal is prescribing medications in such a dose that could be potentially dangerous to the patient. In the case of opioids, though, this can be tricky. In chronic pain patients, for example, they have developed considerable tolerances where the dose would be appropriate for them but would result in the death of someone who is opiate naive.

In the case of Dr. Chris Christensen, in Missoula, Montana, the 68-year-old physician facing charges of negligent homicide and criminal endangerment, the local paper, the *Missoulian* published the following:

“Among the allegations against Christensen are that he “continued to prescribe controlled substances in violation of the restrictions in the stipulation that resulted in at least five patient overdose deaths from defendant's prescriptions, and at least six patient hospitalizations from overdoses from defendant's prescriptions,” the state noted. Prosecutors added that this evidence “is inextricably linked to, and explanatory of, the negligent homicide and criminal endangerment charges” Christensen now faces.”

This is where legal definitions become important. In both “murder” and “homicide” one person has caused the death of another, however, if intent is established (or brazen recklessness), it is referred to as murder, and if intent is not proven, then it is called a homicide. Why is this important? Ultimately, it boils down to whether these actions are considered criminal, excusable, or justifiable - there would likely be variable degrees of punishment. Criminal homicide is the same as murder - it is inexcusable. An excusable or justifiable homicide would be whether the person acted in self-defense, the defense of another, or a law enforcement officer killing someone in the line of duty.

(There are different degrees of murder, but I will not be getting into that.)

The case of Dr. Eugene Gosalb from Williamsville, New York (near Buffalo), involves a physician whose pain clinic prescribed more opioids than any hospital in the state of New York. He, as well as his NP and PA, were prescribing narcotics to known drug abusers. They prescribed such a great volume of opioids that the head of the New York division of the DEA referred to his clinic as a modern-day opium den.

If one is to trust these reports to be factual, then legally, these acts could be considered murder. He and his staff showed complete disregard for their patients and their actions resulted in someone's death.

Hopefully, now, we better understand what constitutes a physician's actions to be considered malpractice or a criminal offense and how the DEA determined that the actions of the physician resulted in someone's death.

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Links

[1] <https://listverse.com/wp-content/uploads/2014/01/108.jpg>

[2] <https://www.nbcnews.com/storyline/americas-heroin-epidemic/new-york-doctor-eugene-gosalb-accused-six-opioid-deaths-n818456>

[3] <https://www.hg.org/article.asp?id=31542>