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## Physicians Convicted for Patient Deaths from Opioid Overdoses

Physicians whose patients die from opioid abuse may face criminal liability.

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In December 2018, a California appellate court upheld the conviction of Dr. Hsiu-Ying Lisa Tseng on three counts of second-degree murder after three of her patients overdosed on opioids and died. In November 2019, New York's highest court affirmed the conviction of Dr. Stan XuHi Li on two counts of second-degree manslaughter based on the overdose deaths of two of his patients.

Both of these convictions are unusual. Tseng was the first physician in the United States to be held criminally liable for murder in connection with the overdose death of a patient. Y. Tony Yang & Rebecca L. Haffajee, *Murder Liability for Prescribing Opioids: A Way Forward*, 91(10) Mayo Clinic Proceedings 1331 (2016). And Li was the first physician in New York to have been [charged and convicted](#) of manslaughter in the overdose death of a patient.

### Manslaughter Conviction

In *People v. Stan XuHui Li*, Dr. Li, an anesthesiologist, operated a pill mill out of his Queens, New York, pain-management clinic. 2019 WL 6312500 (N.Y. Nov. 26, 2019). Despite operating the clinic only on weekends, Li wrote over 20,000 prescriptions for oxycodone and Xanax between 2008 and 2011. Li generally prescribed medically unnecessary doses of these substances as a first resort, without attempting to verify the patient's pain or conducting diagnostic tests. Li often performed only cursory physical examinations and prescribed heavy doses of whatever his patients requested. While patients were not required to make appointments at the clinic, they were required to pay cash, and they were often charged more if they had a friend or relative pick up their prescriptions.

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After two of his patients died, Li was convicted of second-degree manslaughter, among other crimes, which was affirmed by the Appellate Division of the New York Supreme Court. Li then appealed to the New York Court of Appeals.

Li argued that, as a matter of law, he could not be convicted of homicide for providing controlled substances that resulted in overdose deaths. Li asserted that the New York Penal Code already provided penalties for the sale of dangerous drugs, and there were no existing penalties for the death of another as a result of such a crime. The court of appeals rejected this argument, holding that the prohibition against one particular type of conduct will not be deemed to be the “exclusive vehicle” for prosecuting other conduct, unless clearly intended by the state legislature. *Id.*

Li also argued that the jury’s verdict was not supported by legally sufficient evidence. The court of appeals rejected this argument after finding that the prosecution proved beyond a reasonable doubt that Li acted recklessly with respect to the two victims and that his reckless conduct was a sufficiently direct cause of their deaths. The court also held that the evidence presented at trial of Li’s prescribing practices as a whole was relevant to assess his mens rea with respect to the two decedents.

The court of appeals noted that Li disregarded warning signs that his patients were abusing the medication that he was prescribing them, such as early visits; obtaining prescriptions from other physicians; physical deterioration; and, in some cases, “direct warnings” from family members that the patients had overdosed. In fact, despite these warnings, Li did not change his prescribing practices until law enforcement began investigating him in 2011 and even went as far as to alter medical records in response to an investigation from the New York State Department of Health’s Office of Professional Medical Conduct.

An expert witness testified that there was no medical basis for Li to prescribe Xanax with opioids, as Xanax had no pain-relieving function and could cause respiratory failure. According to the expert, addicts often request both drugs together in order to increase their high, and a “highly trained” pain-management specialist like Li would have been aware of this interaction and potential addictiveness of the two drugs but still prescribed both without any documentation as to why they were medically necessary for a particular patient. Critically, the expert noted that these combinations of drugs were not attempts to treat legitimate pain based on “reasoned medical judgment” but were rather a way to create and feed a cycle of craving and addiction.

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With respect to the decedents specifically, the court reasoned that even though Li was not informed that they were both abusing the medications that he had prescribed, or that they had previously overdosed, he still disregarded a substantial and unjustifiable risk that his prescribing practices would result in their deaths. Moreover, in concluding that Li acted recklessly with respect to the two deceased patients, the court of appeals noted that when one of the decedents complained of increased pain, Li prescribed him both Percocet and Xanax without determining the reason for his increased pain and without any indication that he suffered from anxiety. The expert even noted that this specific prescription regimen created a very high risk of the patient dying from a respiratory death. In fact, once Li was informed by the medical examiner of the patient's death, he made several alterations to the patient's file to make it look as if a more complete patient medical history existed.

Li also failed to consider nonopioid-based treatment options for the second decedent. Rather, Li prescribed him a large dose of opioids and Xanax during his first visit despite any indication that he suffered from anxiety. This prescribing regimen, according to the expert, created a "high probability" of overdose and death. As such, the court of appeals concluded that the evidence was sufficient to support the jury's finding that in treating the decedents, Li consciously disregarded a substantial and unjustifiable risk that both would abuse their prescriptions and die.

The court of appeals also concluded that Li's conduct was an actual contributory cause of both decedents' deaths and that the fact that they took their medication in greater doses than prescribed by Li could not be considered "an intervening cause or unforeseeable." *Id.* In reaching this decision, the court of appeals noted that Li's actions need not be the sole cause of death, nor did Li have to commit a final, fatal act to be culpable of causing their deaths. Rather, Li's actions "forged a link in the chain of causes" that brought about their deaths.

## Murder Conviction

In *People v. Tseng*, Dr. Tseng operated a pill mill out of her California medical practice, where medical examinations were largely cursory, attempts to obtain prior medical records or background information were nonexistent, and cash payments were required. 241 Cal. Rptr. 3d 194, 30 Cal. App. 5th 117 (2018). Over a three-year period, Tseng allowed her patients to easily obtain addictive narcotics despite her understanding that many of them were drug-seeking addicts.

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Following the deaths of nine patients, Tseng was convicted of three counts of second-degree murder, as well as various other criminal charges. Tseng challenged her three convictions on appeal.

Tseng argued on appeal that because she was never informed that she was responsible for the victims' deaths or the deaths of other patients (for which she was not charged), she did not show the necessary reckless mindset to support a finding of implied malice. Tseng, like Li, also argued that substantial evidence did not support the finding that she caused the deaths of the first and third victims.

In affirming her conviction, the court of appeals relied on several factors indicating Tseng's awareness of the dangers of her prescribing practices, both in general and with respect to the three murder victims. It noted that starting in 2008, pharmacists began refusing to fill prescriptions written by Tseng because the prescriptions, the patients' profiles and conduct, and the combination of substances and qualities raised "red flags." *Id.* That same year, law enforcement investigators began contacting Tseng to discuss the deaths of several patients who were suspected to have died from overdoses shortly after obtaining prescriptions from her. In fact, Tseng altered patient records in response to the criminal investigations, although she continued her prescribing practices until she was arrested in 2012.

With respect to the first victim, the evidence showed that Tseng knew that he was a drug seeker and that he was already taking high doses of opioids prescribed by other physicians. However, Tseng failed to corroborate his complaints of pain and anxiety or to contact his other physicians. Tseng simply prescribed him opioids and sedatives; and when he returned two weeks later, she wrote him a refill. This victim returned to Tseng almost every month until he died, but at no point did Tseng ever discuss with him the severe health risks posed by the combination of drugs that he was taking. Critically, Tseng learned of the deaths of three of her patients, who had similar patient profiles, while treating this victim.

When the second victim first visited Tseng, he told her that he was using OxyContin in doses normally used to treat terminal cancer patients, as well as heroin. Regardless, Tseng prescribed him 100 tablets each of Xanax as well as methadone (a drug that she was not licensed or trained to prescribe). When he returned twice in one month for refills, Tseng failed to refer him to an addiction specialist and instead wrote him a refill. While treating

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this victim, Tseng was already aware of the deaths of four patients, including the first victim.

When Tseng began prescribing drugs to the third victim, she was already aware of the deaths of eight of her patients, including the first two murder victims. However, she still prescribed the third victim “extremely high” doses of OxyContin, Xanax, and a muscle relaxant and failed to verify the doses or the types of medications that other physicians had prescribed for him. *Id.* This prescription regimen, according to the evidence presented at trial, guaranteed that he would suffer from withdrawals and increased the likelihood of overdose and death.

With respect to causation, the substantial evidence presented at trial, according to the court of appeals, supported the jury’s finding that Tseng’s prescribing practices caused two of the victims’ deaths, despite her arguments of intervening causes. According to Tseng, the presence of methadone in one victim’s system and alcohol in another’s system were unforeseeable intervening causes demonstrating that her conduct did not cause their deaths.

The court of appeals acknowledged that while an independent intervening cause will “absolve a defendant of criminal liability,” it must be unforeseeable, or an extraordinary and abnormal occurrence. *Id.* According to the coroner’s investigation, both victims died as a result of the combination of drugs prescribed by Tseng, and the methadone prescribed to the first victim was not an unforeseen, independent intervening event. Additionally, the alcohol present in the third victim’s system was not at a lethal level. Accordingly, the jury could have reasonably concluded that neither substance was an independent intervening cause of death.

## Pending Cases

Similar criminal charges are being brought against other physicians. In June 2018, Dr. Regan Nichols [was charged](#) with second-degree murder in Oklahoma in connection with at least five patient deaths from a combination of painkillers and other drugs. And in August 2019, the California attorney general [charged](#) Dr. Thomas Keller, a Northern California neurologist and pain-management physician, with murder in connection with the deaths of four patients.



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## Conclusion

The convictions of both Li and Tseng present interesting and important issues for physicians whose practices focus on pain management as more states and the federal government attempt to combat the current opioid epidemic. As both Li and Tseng's cases illustrate, physicians who disregard or ignore the dangers that their patients face from opioid abuse and addiction may face criminal liability. Based upon these cases, it is clear that physicians who prescribe opioids must practice due diligence and ensure that the proper medical examinations, documentation, and review of patient histories are performed.

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