This is Pat Iyer with *Iyer's Insights* and today I'm going to be talking with you about deaths from overdoses of medications. Or were they overdoses? An interesting question.

In the previous podcast you heard Sharon Kelly talk about the police perspective on opiates. And today I'm going to share with you a couple of cases that I read about in *Medical Malpractice Verdicts Settlements and Experts* that were published in the July 2018 edition.

In the first case which took place in California there was a 54-year-old self-employed contractor who called his plastic surgeon with whom he had been friends with for over 20 years. He called on the morning of September 29, 2014. The man complained of pain in his neck, back, shoulder and upper arm. He had previously held multiple telephone conversations with surgeon during the week of September 22nd, 2014. The decedent had informed the surgeon about his complaints and claimed that his pain had not been resolved with the use of over-the-counter medication and rest. (That's at the time of the telephone conversation on the 29th).

The surgeon prescribed a powerful narcotic called Vicoprofen and a muscle relaxant called Soma. The decedent did not come into his friend the surgeon's office for an examination. In fact, he had never been previously treated in the surgeon's office.

A few days later the decedent and some friends went traveling to a Celebration of Life event following the death of a family friend.

The decedent consumed a significant amount of alcohol at the event and then went to bed on October 3rd, 2014. The following morning friends discovered the decedent in bed. He was dead. He had apparently died at some point during the night.

An autopsy was accomplished by a medical examiner which revealed that the decedent had an enlarged heart as well as modest coronary artery disease.

The toxicology lab studies also revealed a blood alcohol content of .13 percent and therapeutic levels of Vicoprofen and Soma. The issued autopsy report concluded
that the primary cause of death was cardiac in nature but with contribution from the combination of drug and alcohol toxicity.

The decedent's daughter was the plaintiff and sued the plastic surgeon and his medical office, meaning the entity known as the practice. The plaintiff alleged that the defendants were negligent in the treatment of her father and in issuing the prescriptions. She alleged this negligence constituted medical malpractice and caused her father's wrongful death.

The surgeon's practice was voluntarily dismissed before trial. Thus, the matter went forward against only the plastic surgeon.

The plaintiff's pathology expert was the person who performed the autopsy and issued the report that included comments about the combination of drug toxicity. He testified about his findings and the basis of his conclusions regarding the cause of death.

He also testified at trial about how he determined the combination of drug and alcohol toxicity contributed to the decedent's death. The plaintiff conceded that the decedent bore some responsibility for his death because he did drink alcohol while on the pain medication.

The plaintiff also argued the defendant was wrong in prescribing the medicine in the absence of an actual physical exam. According to the plaintiff, the defendant and the decedent were both to blame for the decedent's death. (So, the interesting question is how do you separate out those areas of responsibility?)

The plaintiffs had an internal medicine expert who noted that California law precludes physicians from issuing a prescription for medication, particularly narcotic medication, without performing an exam. There must be a face to face patient encounter and a good faith physical examination prior to issuing the prescription.

On that basis the expert opined that it was below the standard of care for the surgeon to have issued the prescriptions without first performing an examination.

The defense's plastic surgery expert opined that the defendant had gathered all pertinent medical information over the phone from the decedent to determine that the prescriptions for Vicoprofen and Soma were indicated and appropriate and the telephone communications did, in fact, satisfy the patient examination required by
California law. (I find it interesting that a phone call equals a physical examination.)

Moreover, the expert pointed out that even in retrospect there were no medical conditions present that would have made the prescriptions contraindicated if a face to face examination had taken place. (So, this is the argument of "Well, we didn't do it. And if we had, it wouldn't have made any difference.")

The defense's pathology and cardiac pharmacology experts testified that the cause of death was indeed primarily cardiac in nature. But they opined that the event was triggered by the binge consumption of alcohol. The two experts explained there was no drug toxicity in this case as all medications were at therapeutic levels and did not trigger any type of cardiac event.

The surgeon claimed that he advised his friend at the time he was issuing the prescriptions that the medications should not be taken with alcohol. (And of course, the decedent was unable to contradict that testimony.) Thus, the defense argued that the decedent caused his own death by consuming alcohol while taking the prescribed medications.

The jury found in favor of the defense after deliberating for 45 minutes at the end of a six-day trial. This case was called Taylor Hitchcock versus William Aiello MD and Ocean Plastic Surgery Center in Orange County.

This is an interesting case in which the decedent was held responsible for his own death by his actions and the combination of the medications and alcohol potentiating each other.

This is Pat Iyer. Before we continue with the show I'd like to draw your attention to a resource I created that will help you analyze emergency department cases. These are the types of situations that are high risk, where much can go wrong in an emergency department. And some of those cases might involve overdose of opiates.
Would you be able to separate out the bad outcome from the medical malpractice events? I wrote a book called *Analyzing Emergency Department Medical Malpractice Cases*. This book focuses on the highest risk aspects of health care. Emergency Department care may be part of a personal injury case or medical malpractice case or any case in which the patient required emergency services. Do you understand the complexities of emergency department functions?

This book will take you behind the doors of the E.R. to get a bird's eye view of what goes on. There are several aspects of emergency department care that make it high risk for errors. There is an unpredictable flow of patients. There is constant pressure to quickly assess and treat patients. There is a lack of a previous relationship with patients and a huge variety conditions and ages of patients.

The public is increasingly aware of emergency department quality of care issues. Demand for Emergency department services is increasing and with it cases against ER staff. In this book you will get an understanding of the roles and responsibilities of the ED department, related to triaging, assessing, diagnosing, and treating emergency department patients.

It highlights emergency department liability issues. And provides vital content to help legal nurse consultants analyze the emergency department medical malpractice claim.

Order your copy of my book today at http://LNC.tips/ED and use the code "listened" to get a 25 discount on the price of the book. That link again is http://LNC.tips/ED and use the code listened to get a 25 percent discount on the book. Now let's return to the show.

I want to share with you a second case which is shorter also involving a person who died after consumption of medications.

In this case the decision was about a 24-year-old man was struggling with drug and alcohol addiction. In the fall of 2011, he was admitted to a drug rehab facility. The facility was known as Phase 2 program with a residential setting. Patients could come and go as they pleased. His parents paid $10,000 a month for his treatment.

His parents visited him two months later, and the decedent was reluctant to re-enter the facility (presumably after their visit.) He was placed in the infirmary. He had a roommate in the infirmary.
They engaged in drug seeking behavior that evening. The two men entered the defendant physician's office and found a sleeve of Suboxone in the defendant's desk. The decedent ingested the drug.

A short time later a nurse found him in respiratory distress. While efforts were made to revive him, he suffered from a fatal overdose.

There was an initial autopsy that indicated he died of Citalopram overdose. But a month later the decedent's family hired an attorney and communicated with the roommate. Because of what he said, a second autopsy was performed. The Suboxone was detected and the autopsy was amended to reflect the joint toxicity.

The decedent's estate alleged negligence regarding the storage of the drug. The defense alleged that the decedent engaged in burglary to access the drugs; therefore, the plaintiff's claim should be foreclosed by the decedent's own wrongful conduct.

The trial court granted summary judgment. There was an appeal. The Appeals Court reversed that decision. It concluded that there was an exception to the wrongful conduct rule when the defendant had a duty to protect the decedent from engaging in the wrongful conduct in the first place.

The estate settled its claim with the facility. The jury returned a verdict in favor of the defendant physician. This case was the Estate of Ben Cahn versus Lloyd Gordon. It was decided in Rankin County, Mississippi.

In this case the fact that the young man was able to get into the unlocked office led to the thinking that someone was negligent and having them settle the case. But the physician whose office it was, was not considered being negligent.

When juries are faced with cases involving the behavior of the decedent, or patient, or plaintiff, depending upon who that case is about, they have the opportunity to assign blame to the actions of that individual.

And here we have two cases that I shared with you in which the consumption of medications was a factor in the death of the patient.

As a legal consultant you can be involved in cases involving opiates and many different perspectives. You could be asked to evaluate a case in which nurses gave too much opiates to a patient. Or did not appropriately monitor the person after
administering opiates. Or not recognize any interactions between a variety of medications that were ordered or use poor judgment in administering them simultaneously.

You could be involved in cases in which people commit suicide by accessing medications. Or physicians or other prescribers who prescribe too many medications and are not carefully monitoring the impact of those medications on the patient.

These are interesting case with horrible outcomes. And you will no doubt be involved with them in an increasing way as we are focusing more and more on the harmful effects of opiates. And the mechanisms that are not effectively controlling their use as of now.

This has been Pat Iyer with Iyer's insights. Thank you for listening to this program. Return next week. We'll have new shows.

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