



**Congratulations to Partner Michael Badowski
on Defense Verdict in Med Mal/Prescription Drug Matter**

This case involved the death of a thirty-year old female on August 23, 2002 from multiple prescription drug overdosing. The essence of the Plaintiff's claims was that our Defendant pain management physician negligently prescribed high doses of the pain medication Actiq (oral transmucosal fentanyl) without due consideration for the interaction of the drug with the numerous other prescription medications being taken by the patient.

Plaintiff's decedent was a long time sufferer of severe and debilitating migraine headaches and diagnosed progressive fibromyalgia along with a host of mental health disorders. She had been seen and treated for these conditions by numerous health care providers of varying specialties for many years without any sustainable relief. At the outset of our client's 2½ year involvement in the Patient's care, conservative treatment measures at pain relief were attempted but proved unsuccessful and she eventually required narcotic opioid pain medications to achieve some level of functional control over her pain. At times, the patient received Vicodin (hydrocodone), Duragesic Patch (timed release transdermal fentanyl), and Oxycontin.

The immediate events leading up to the patient's death began on 8/13/02, when she called our Doctor's office complaining of severe, unrelenting migraines. The evidence confirmed that the patient had been frequenting all of the area hospitals' emergency departments seeking pain injections and was turned away as a "drug seeker". Over the phone, the doctor authorized an emergency room visit and renewed for her a prescription of Lortab (Vicodin) which had most recently been prescribed to her by her PCP. Three days later, 8/16/02, the patient presented without appointment to our client's office in extreme pain distress and represented that the ED's refused to treat her and that she had nowhere to turn. In an effort to break her migraine pain cycles and keep her out of the ED's, the doctor provided 800 mcg and 1200 mcg scripts of Actiq oral pain relief swabs to be taken only once every 4 to 6 hours prn. On the day that she had filled the 1200 mcg script of Actiq, the patient was found dead in her home where she had lived with her mother. There was no definitive evidence to indicate just how much drugs the patient had taken in the hours before her death.

Peripheral blood toxicology on autopsy returned the following results:

- Amitriptyline - 1100 nanog/mL
- Nortriptyline - 370 nanog/mL
- Fluoxetine - 1200 nanog/mL
- Norfluoxetine - 600 nanog/mL
- Propoxyphene - 0.38 mcg/mL
- Norpropoxyphene - 1.5 mcg/mL
- Carisoprodol - 1.5 mcg/mL
- Meprobamate - 4.7 mcg/mL
- Fentanyl (Actiq®) - 4.0 nanog/mL
- Norfentanyl - 2.4 nanog/mL
- Promethazine - ~540 nanog/mL
- Barbiturates Cross-Reactives - Positive
- Butalbital - ~0.2 mcg/mL

The cause of death was said to be “multiple drug toxicity” as most of the medications were demonstrated to be well above recognized therapeutic ranges with Actiq appearing at the anecdotal low end of the lethal range.

At trial, plaintiff’s attorney focused in on the Actiq as the primary culprit. Plaintiff emphasized that the PDR and package insert for the drug called for its use only in the treatment of break through pain in cancer patients and only at closely titrated doses starting at 200 mcg. Plaintiff’s attorney highlighted the drug manufacturer’s “Black Box” warnings of the danger of respiratory depression and arrest. In defense, we succeeded in persuasively educating the jury as regards to the “off label” use of most medications by clinicians and that the limited FDA approved use of prescription drugs published in the PDR simply does not represent the standard of care. Defense experts, Philadelphia toxicologist, James Roberts, M.D. and Philadelphia pain management specialist, Daniel Gruener, M.D. provided exceptionally cogent testimony that the manner in which our client employed the use

of Actiq in this instance was appropriate and that the patient's death was the result of her taking more of her meds than what had been prescribed by her physicians. Case studies were revealed to the jury that Actiq is safely employed "off label" to treat migraine headache sufferers and prevent the frequency of costly and embarrassing ED visits and at self administered doses ranging between 400 mcg to 1600 mcg prn. Plaintiff's pain management expert, Gerald Aronoff, M.D. was cross examined by reference to his own publications supporting the use of Actiq as an effective analgesic in non-cancer break through pain patients.

It was postulated to the jury that the patient's death was due to her over medicating herself either as an effort to relieve her unremitting pain or as a deliberate suicide. Following a week long trial, a 12 member (all female) Dauphin County jury unanimously returned a verdict of no negligence in favor of our pain management physician client.

The case was prosecuted on behalf of the Plaintiffs by Philadelphia attorney, Leon Aussprung, M.D., J.D. and defended on behalf of the doctor by Margolis Edelstein partner, Michael Badowski.



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