

sacbee.com/content/news/story/9399329p-10323635c.html>

Murder case dissolved, but so did doctor's life

By Sam Stanton -- Bee Staff Writer
Published 2:15 am PDT Sunday, May 23, 2004

EL CERRITO - With his mild manner and coifed white hair, Frank Fisher doesn't seem like a guy who killed as many as nine people, as the state once claimed.

As it turns out, the doctor wasn't really part of what investigators once pronounced "a highly sophisticated drug-dealing operation."

He's just a 50-year-old doctor, Harvard-trained, who has lost his practice and his assets, a man who's resorted to living in his parents' cramped home as the result of a five-year battle to prove he is not a killer, not a drug dealer, not guilty of Medi-Cal fraud.

One of the final volleys in that battle came last week, when a jury in Redding acquitted Fisher on eight misdemeanor counts of Medi-Cal fraud.

The verdict marked the prosecution's latest failure to make any of its allegations stick, and the apparent end of state efforts to prosecute Fisher on criminal charges stemming from his once-booming medical practice in the Redding area.

"After the trial was over, I got online and saw all the stuff he's been through and I couldn't believe it," said juror Marty Glassett, a Burney electrician. "It just felt like they were on a witch hunt to me."

"They" would be prosecutors for state Attorney General Bill Lockyer, whose office last week had no comment on the case.

In February 1999, Lockyer charged Fisher and the owners of a Redding-area pharmacy with murder, drug dealing and fraud. The case began as a blockbuster that drew national attention and earned Fisher the sobriquet "Redding pain doctor" anytime he was mentioned on television, radio and in print.

Lockyer, who at the time had been attorney general for just a month, called a press conference to announce the arrests, saying authorities were saving Redding from saturation with highly addictive pain medications.

Investigators believed Fisher was indiscriminately prescribing massive amounts of painkillers to patients at his Westwood Walk-in Clinic in Anderson, south of Redding, then sending them to fill their prescriptions at the Shasta Pharmacy, owned by Stephen and Madeline Miller.

Authorities filed three murder counts with the original charges because three of the patients were said to have died of overdoses of the powerful painkiller OxyContin. Eventually, prosecutors would say they believed as many as nine people in Fisher's care had died, although they ended up filing five murder charges.

Fisher was arrested and handcuffed at his Anderson clinic.

The clinic was shut down, his assets were seized, and he and the Millers ended up in jail for five months.

"My bail was set at \$15 million," Fisher said. "I thought they set bail on Colombian drug lords at \$7 million or \$8 million."

And then the case began to fall apart.

By July 1999, a Shasta County judge threw out the murder charges for lack of evidence and allowed Fisher to be released on a \$50,000 bond.

The case dragged on until January 2003, when a judge dismissed manslaughter and fraud charges against Fisher and the Millers. He was left facing the misdemeanor charges decided Tuesday.

"They made an enormous blunder, and they didn't want to admit it," Fisher said in an interview last week.

The prosecutor in the final case was tight-lipped after the verdict. "The jury has spoken," Deputy Attorney General John Dower told the Redding Record Searchlight.

From the start, the case was controversial, in part because of the national debate over how to treat patients suffering from chronic pain. Some believe powerful drugs such as OxyContin are so addictive that prescribing too much is inherently dangerous.

Fisher contends he treated his patients diligently while providing them relief from pain.

Early on, holes in the state's case seemed readily apparent to Fisher and his supporters, many of whom rallied outside the Shasta County Courthouse.

One of the alleged murder victims died when the car she was in smashed into a tree. Prosecutors said she had massive amounts of oxycodone, the active ingredient in OxyContin, in her blood. But court testimony later indicated the toxicology reading had been a "false reading."

Another alleged murder victim was Tamara Lorette Stevens, who was being treated for pain from a perforated stomach ulcer. Stevens died in September 1998, and authorities charged that Fisher's OxyContin prescriptions led to her death.

But her husband, Robert, also a Fisher patient, disputed that in a recent interview, saying Fisher had helped both of them immeasurably and that he believes his wife died of heart failure.

"They didn't care," Stevens said. "He was helping people and I guess they didn't think that the people deserved help because they were on Medi-Cal."

Stevens is a former farm laborer who blames years of field work for his back pain. After Fisher's arrest, Stevens said, he could not find other doctors in the area willing to risk dispensing medicine for chronic pain, and ended up traveling to Fresno for help.

Now, he says, he has another Redding-area doctor who has prescribed more OxyContin to him than Fisher ever did.

The huge amount of painkilling medicine Fisher was prescribing is what led to the case in the first place. Medi-Cal

officials noted there had been an enormous jump in such prescriptions in 1998, with Fisher dispensing more of the medicine than any of the other 50,000 OxyContin prescribers in the state.

At the same time, the Millers' pharmacy became one of the largest dispensers of such medication in the nation.

Fisher says he simply was serving his patients, under state law, by providing them with pain relief, and that he took extreme precautions to avoid overprescribing.

At the time, his practice consisted of 3,000 patients, most of them families and children seeking routine care. About 5 percent to 10 percent of his patient load consisted of people seeking help for chronic pain, he said.

Fisher estimates that state undercover agents visited him at least seven times trying to obtain prescriptions using bogus ailments, and that he refused to provide them with medicine. So, investigators began looking for victims.

"The attorney general's office looked at the amount of medication I had prescribed and what it cost the medical program and developed a theory that said that must have killed people," Fisher said. "Well, that's not the way a murder case starts.

"It usually starts with a body, then they look for a perpetrator. In this case they developed a theory of a murder case and started looking for bodies."

The judge never bought into the theory, tossing out the murder charges and most of the other counts.

Eventually, Fisher faced eight misdemeanor counts of Medi-Cal fraud accusing him of filing incorrect reimbursement forms. His attorney estimated he was charged with exceeding legal limits by \$150, Fisher said.

That case ended Tuesday, giving Fisher hope that his legal troubles – at least the criminal ones - are over.

He still faces three wrongful death suits filed in the wake of the original charges, cases he says his attorneys are confident can be defeated now that he has beaten the criminal charges.

And the Medical Board of California still intends to pursue action against him. The board filed an accusation, mirroring the criminal charges, that has been on hold while Fisher fought it out in the courts. Now, the board says, it will move forward to take Fisher's license.

For their part, the Millers say that even after the charges against them were dropped, the state continued to make things difficult. They received a court order allowing return of their assets, but claim Lockyer's office still is holding \$400,000 in cash; and the state Board of Pharmacy is trying to revoke Stephen Miller's license.

The couple say they have lost one home fighting the case, and that they have been living off money from life insurance policies and friends.

"I feel like I've been raped, like we've been violated," Madeline Miller said.

Fisher's own parents have used more than \$100,000 in

retirement savings to help their son, who has not worked since the case began. At this point, he's lost everything but a 1988 Mercedes sedan with 300,000 miles on it, and his medical license.

And he wants to keep that license.

"I'll go back into some form of medical practice," he said when asked about his plans. "Maybe I'll get a job. I don't know what I'm going to do next."

About the Writer

The Bee's Sam Stanton can be reached at (916) 321-1091 or sstanton@sacbee.com.



Prosecutors "made an enormous blunder, and they didn't want to admit it," says Frank Fisher, shown in his El Cerrito home last week. Fisher had been accused of overprescribing painkillers and killing patients. Sacramento Bee/Randall Benton

EDITORIAL: Law's intruding on medicine does little for patients

August 11, 2004

Redding Record Searchlight

In early 1999, state officials spun a tale involving a drug-abusing physician whose greed and contempt for the law led him to run a pill mill that created thousands of addicts and left a trail of dead bodies. They charged him with multiple counts of murder and set his bail at \$15 million.

Five years later, a jury acquitted the doctor of even misdemeanor fraud charges. As for the deaths, the original murder charges were reduced to involuntary manslaughter, delayed for years, then dismissed in 2003. State prosecutors say medicine has evolved and the practices that made Dr. Frank Fisher a menace to society then would not be worth bringing before a jury today.

The utter collapse of the state's case against Fisher and Stephen and Madeline Miller, former owners of the Shasta Pharmacy, shows the hazards of trying to answer medical questions in the criminal courts.

OxyContin -- the opiate painkiller at the heart of the case -- is both highly effective and powerfully addictive. It has given patients relief from chronic crippling pain but also spawned crime waves fed in part by patients who resell their prescription pills. Where is the divide between aggressive pain treatment and reckless dispensing of addictive drugs?

To the state, it originally seemed obvious that Fisher and the Millers were far over the line. In 1998, Fisher prescribed and Shasta Pharmacy dispensed huge quantities of oxycodone, the generic name for OxyContin. Shasta Pharmacy was by far the state's largest retail distributor of the drug, largely because of Fisher's prescriptions. And, of course, people had died.

But OxyContin had come on the market in 1996, and its use was quickly spreading. Today its manufacturer, Purdue Pharma, sells about \$1.2 billion worth a year. Fisher may simply have been ahead of the curve in his practice, which should not be a crime.

It would be too easy to say that the police should never intrude on the doctor-patient relationship. Physicians are not saints. Criminals abuse the system. Vast sums of taxpayer money are spent on Medicare and Medi-Cal, and the government

must pursue suspected fraud.

Still, there are clear signs of a system out of balance. The Association of American Physicians and Surgeons recommends that doctors avoid using opiates in pain management because the risk of prosecution is too steep.

That fear is entirely justified. Doctors around the country are serving long prison terms after being prosecuted on charges related to overprescribing painkillers. Fisher and the Millers have lost their homes, livelihoods and reputations, but having their freedom leaves them better off than some.

Prosecution of suspected wrongdoers is not a problem -- it is law enforcement's job -- but a climate of paranoia that prevents legitimate pain patients from receiving treatment only causes needless suffering. The system must guard against abuse, but our medical standards should be set by doctors and patients, not cops and robbers.