



Malpractice suit filed against doctor

Lawsuit claims patient was found dead after injected with morphine and sent home

By Susan Schulman, NEWS STAFF REPORTER | June 19, 2011

A third malpractice suit has been filed against an Amherst pain management specialist, this time by the family of a man who, the lawsuit claims, died hours after Dr. Eugene J. Gosy injected him with morphine.

Anthony V. Mardino was already prescribed Oxycontin, an opioid painkiller, by Gosy, when the doctor also administered Duramorph, a brand name morphine, according to the lawsuit.

Mardino was sent home from the doctor's office 30 minutes after the morphine injection and was found dead in his bed within about 12 hours, according to the lawsuit. He stopped breathing, the lawsuit claims, as a complication from the Duramorph.

"Patients must be observed in a fully equipped and staffed environment for at least 24 hours after the initial dose [of Duramorph]," the lawsuit says. Because of Gosy's "failure to monitor [Mardino] for at least 24 hours . . . [Mardino] suffered respiratory depression and/or respiratory arrest, and he died," the lawsuit charges.

Gosy acknowledges, in court papers, having treated Mardino, but denies having injected Mardino with Duramorph prior to his death or having done anything wrong.

Mardino died from a pre-existing condition that was unrelated to treatment he received from Gosy, according to Gosy's attorney, Jesse B. Baldwin.

"Due to confidentiality of health information, we are not permitted to comment on the specifics of Mr. Mardino's medical condition or the care Dr. Gosy provided him," Baldwin said. "However, the Erie County Medical Examiner has already concluded that Mr. Mardino's death was caused by a pre-existing medical condition unrelated to Dr. Gosy's treatment."

Baldwin did not provide any additional details on the cause of death, citing the confidentiality laws. The Erie County Medical Examiner's office also declined to disclose to The Buffalo News the cause of death.

Mardino was 55 years old and on disability when he died May 18, 2007. The malpractice case against Gosy was filed in state Supreme Court in 2009 by Mardino's wife and two adult children. Following a series of ongoing legal exchanges between lawyers, a preliminary conference with the judge assigned to the case is scheduled for June 30.

Gosy has been identified by The News as the No. 1 prescriber of narcotic painkillers in the state.

His Amherst-based pain management center is the largest of its kind in the region, and perhaps in the state, with some 2,700 doctors referring patients to Gosy's office.



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Gosy has described his center as a “model” practice that has helped thousands of patients with chronic pain, from as far away as Jamestown and Rochester, return to work and improve their quality of life.

But as The News detailed in “Rx for Danger,” a four-part series published in March, there’s been an increase in prescription painkiller addictions and deaths locally and nationally. Given that, there’s concern about the vast amount of these powerful drugs being dispensed.

Gosy is among the Buffalo area doctors scammed by a gang of street dealers last year into prescribing painkillers that the gang would sell on the streets.

And Gosy has been sued two previous times since 2005 for malpractice. Both cases involved patients who died from overdosing on pain medication.

In one of the earlier cases, a jury found Gosy negligent for causing a patient pain and suffering, but not her death.

In another, a jury cleared Gosy, but questions lingered over his use of methadone for treating an addicted patient’s pain and withdrawal.

In this most recent case, the lawsuit says Gosy had been treatingardino since Sept. 6, 2005 and had prescribed him the painkiller Oxycontin. On May 17, 2007, the lawsuit says, Gosy injected Mardino with 1 milligram of Duramorph, a morphine drug that was administered intrathecally — a single injection that goes through the spinal sack into the cerebral spinal fluid.

The lawsuit says that the Duramorph label, under the heading “Warnings” states, in part:
“Severe respiratory depression up to 24 hours following epidural or intrathecal administration has been reported. . . . patients must be observed in a fully equipped and staffed environment for at least 24 hours after the initial dose.”

Gosy or one of his associates observed Mardino for just 30 minutes, then sent him home, without ever mentioning the respiratory risks associated with the drug, according to the lawsuit. Over the next several hours, according to the lawsuit, Mardino complained to his wife, Nancy, of severe pain and discomfort, including a headache.

About 12 hours after the morphine injection, according to the lawsuit, Nancy Mardino found her husband in bed, dead. He had suffered respiratory depression, which slows breathing to the point that it is not fully ventilating the lungs; or possibly respiratory arrest, when breathing is halted, according to the lawsuit.

In court papers, Gosy denies any claims related to Duramorph or having had any role in causing Mardino’s death. “We will continue to defend this case through trial and are confident that the outcome will be in Dr. Gosy’s favor,” Baldwin, Gosy’s attorney, wrote in an e-mail to The News.

Mardino’s wife did not return a call from The News, and her attorney declined to comment on the case.

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