

# **SCHAUM LAW OFFICES**

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## **TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF**

**New York's highest court has affirmed the conviction of a physician who was tried on a charge of second-degree manslaughter in the treatment of a patient.**

**You may recall that some years ago a Brooklyn physician was similarly charged but the indictment was dismissed. This latest case deserves a thorough examination of the facts and certainly sounds a warning bell for careless, or worse, practitioners.**

**It was established that over a period of three years the doctor had prescribed medically unnecessary high doses of controlled substances in the absence of ordering any tests to determine the cause of the pain of the patients. The evidence also included the fact that he had been advised by both family members and other physicians that the patients were opioid addicts and could die from prescription misuse. It certainly did not help the defense that cash had been paid for the medications and that the transactions took place at an office which was only open on weekends.**

**The prosecution evidence also adduced the facts that opioids had been prescribed on the first visits of the patients in the absence of any diagnostic tests. In addition, a prosecution expert witness testified that the accused physician had ignored clear signs that abuse of medications were occurring. Concerning some of those prescribed in medications would not serve to have any pain-relieving effects and could result in stoppage of breath. The risks of overdosing possibly leading to death were ignored.**

**In defense of the accused it was argued that the physician could not have foreseen that abuse or overdosing would occur. The court dismissed this theory quite rapidly and stated that the taking by the victims were not unforeseeable and thus not an intervening and independent cause of death. In point of fact the misuse was a direct result of reckless prescribing.**

**As a last grasp upon appeal the argument was made the state had enacted penalties for the sale of dangerous drugs and the crime of causing another's death for such a sale had not been included in the statutes. As could be expected the Court of Appeals dismissed this contention by finding that as a general rule a prohibition of a certain conduct is not an "exclusive vehicle" for the prosecution of such conduct and would not act as a bar for the finding of second degree manslaughter.**

**The case sounds as a very clear warning to those willfully wrongly prescribe. The matter does not rest solely upon the wrongful prescribing but will expose those who do so to extremely severe charges and imprisonment.**

*Respectfully submitted,*

*Schaum Law Offices*