

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

DEC 04 2015

Sherri R. Carter, Executive Officer/Clerk  
By David Marquez Deputy

JACKIE LACEY  
District Attorney of Los Angeles County  
By: JOHN NIEDERMANN  
GRACE RAI  
Deputy District Attorneys  
MAJOR NARCOTICS DIVISION  
211 W TEMPLE STREET, 11<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90012  
(213) 257-2140  
Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
HSIU-YING "LISA" TSENG,  
  
Defendant.

Case No. BA394495  
  
PEOPLE'S SENTENCING  
MEMORANDUM PURSUANT TO  
PENAL CODE SECTION 1170(b),  
1168(b) AND 669  
  
Date: December 14, 2015  
Time: 08:30 AM  
Court: Department 107  
Trial Date: August 26, 2015

To the HONORABLE GEORGE G. LOMELI, Judge of the above-entitled court,  
TRACY GREEN, counsel for the defendant HSIU-YING "LISA" TSENG. The People  
hereby submit the following sentencing memorandum in support of the defendant's  
sentence in this case.

I.

STATEMENT OF FACTS

Over the course of six weeks, this Court heard testimony from more than 70  
witnesses regarding the defendant's medical practice in Rowland Heights, California,  
between the years of 2007 through 2010. Included in the testimony were many former  
patients who described how easy it was to obtain prescriptions for potent controlled  
substances without medical justification, despite being an addict. Multiple coroner

1 investigators testified that they called the defendant, sometimes more than once a  
2 month, to inform her that her patients had overdosed and died. Those conversations  
3 were memorialized in the defendant's computer. Undercover agents also testified and  
4 corroborated the testimony of former patients with regards to the ease by which  
5 prescriptions could be procured.  
6

7 The Court heard from the families of deceased victims and the struggles the  
8 deceased had with addiction. Expert testimony established that the defendant  
9 repeatedly and blatantly violated the standard of care to the ultimate extremes. While  
10 amassing a fortune of millions of dollars, and despite repeated warnings pertaining to  
11 the danger to her patients, the defendant's prescribing practices never changed and in  
12 some patients actually increased. When asked for medical records justifying her  
13 prescriptions, the defendant routinely created faked and altered medical records.  
14  
15

16 The jury deliberated for two weeks before convicting the defendant of three  
17 counts of second degree murder, in violation of Penal Code section 187(a), 19 counts of  
18 illegally prescribing controlled substances in violation of Health & Safety Code section  
19 11153(a), and one count of fraudulently prescribing controlled substances in violation of  
20 Health & Safety Code section 11173(a).  
21

22 II.

23 CIRCUMSTANCES IN AGGRAVATION

24 (1) California Rules of Court, Rule 4.421(a)(1)

25 *The crime involved great violence, great bodily harm, threat of great bodily*  
26 *harm, or other acts disclosing a high degree of cruelty, viciousness or callousness.*  
27

28 While not your "typical" murder case where the aggressor administers the killing

1 blow to the victim, the defendant's actions were actually much more insidious than  
2 typical murder. The defendant's repeated acts of overprescribing controlled substances  
3 to people she did or should have known were likely to abuse them was her stealth  
4 means of killing; despite the defense's protestations at trial that the evidence indicates  
5 that her patients accidentally overdosed and died. Moreover, unlike a seemingly  
6 merciful ending to one's life with a single and immediate fatal blow, the Defendant's  
7 patients slowly suffocated on the fluid that filled their lungs while their central nervous  
8 system shut down, not allowing them to breath or cough. Coroner investigators spoke  
9 of the "foam cone," better described as foam that is expelled from the lungs as an  
10 individual suffocates.  
11

12  
13       Clearly the defendant's actions could result in death, as her patients, their  
14 families, law enforcement and coroners repeatedly informed the defendant of that fact  
15 as well as the fact that it was, indeed, happening. Yet, according to the testimony of the  
16 defendant's husband, also a practicing doctor in the same clinic, these calls informing  
17 them of patients' deaths, "Did not cause a problem in the office, they were just F.Y.I."  
18 Such a callous and heartless attitude towards the death of one's patient, a death that  
19 the People's expert said would have a "profound" impact on the way he continued to  
20 practice medicine, was met at Advance Care AAA with utter complacency.  
21  
22

23               (2) California Rules of Court, Rule 4.421(a)(3)

24               *The victim was particularly vulnerable.*

25       In this case, the victims were drug addicts who were seeing the defendant in the  
26 hopes of securing narcotics to which they were addicted. The defendant's concern was  
27 not for the well-being of her patients but rather the monetary benefits they provided her.  
28

1 As the defendant's own husband testified, the tax records of the business owned by  
2 himself and the defendant grossed more than \$5,000,000 while she was practicing with  
3 him. They were able to purchase with cash, a building soon to be known as Gale  
4 Medical Plaza. Furthermore, many of the defendant's patients testified that they were  
5 sometimes high on narcotics when they saw her, clearly indicating they were addicts. In  
6 spite of their condition, the defendant would nevertheless prescribe to them after they  
7 paid cash. One former patient testified that he overdosed in front of the defendant in  
8 her clinic and this did not deter her prescribing habits in the least. Worse, she actually  
9 increased the amount of medication she was prescribing to Lana Rau by creating a  
10 fictitious patient, "Joseph Rau," allowing her to double up on the amount of medication  
11 Ms. Rau was receiving. Of course, Ms. Rau had to pay for that additional "visit" by her  
12 husband which she gladly did while she met the defendant in one of the clinic's storage  
13 rooms. These facts demonstrate the defendant's true motivation. She was preying on  
14 the weaknesses and needs of a group of particularly vulnerable people. She was  
15 actively creating a captive audience, guaranteed to return to pay her for more  
16 prescriptions as they grew deeper into their addiction. And the Defendant knew this,  
17 she referred to her clients as "druggies." Those who should have been treated by the  
18 defendant were in fact becoming sicker due to her opportunism. As one expert testified,  
19 the defendant had the opportunity to stop them from falling over the cliff and, instead,  
20 she shoved them off.  
21  
22  
23  
24

25 ///

26 ///

27 ///

1 (3) California Rules of Court, Rule 4.421(a)(8)

2 *The manner in which the crime was carried out indicates planning,*  
3 *sophistication or professionalism.*

4  
5 The defendant went to great pains to maximize the profitability of prescribing to  
6 addicts. She saw so many patients that there were times when multiple patients were  
7 seen at the same time in an exam room with a wait time that took all day. Additionally,  
8 she streamlined the amount of time she actually had to spend with patients by failing to  
9 keep any medical records on them, which the People's expert deemed the "life's blood"  
10 of medicine. It was only after the Medical Board of California requested records that  
11 they would appear on her computer, which demonstrates the defendant's  
12 consciousness of guilt. She also deposited the business' earnings in multiple bank  
13 accounts, moving the money around between them in an intentional manner. All of this  
14 evidence demonstrates sophistication and planning on the part of the defendant to  
15 prescribe with abandon to her patients, regardless of their true medical needs.  
16  
17

18 Most appalling of all, despite being repeatedly warned that her patients were  
19 overdosing and dying, the defendant did not let up on her prescribing. Her business  
20 enterprise was the definition of a "pill mill."  
21

22 (4) California Rules of Court, Rule 4.421(a)(9)

23 *The crime involved an attempted or actual taking or damage of great*  
24 *monetary value.*

25 The defendant's business was exceedingly lucrative. By applying simple math,  
26 the Court can see how much income she was making from her addict clients. Gloria  
27 Rodriguez testified that the business was making \$2,000 to \$3,000 a day and was open  
28

1 seven days a week. That amount would equate to somewhere between \$14,000 to  
2 \$21,000 a week, or between \$728,000 to \$1,092,000 per year. That is an incredible  
3 amount of money to bilk from vulnerable prescription addicts of Los Angeles, Orange  
4 and Riverside Counties.  
5

6 (5) California Rules of Court, Rule 4.421(a)(10)

7 *The crime involved a large quantity of contraband.*

8 The Court heard testimony from many of the defendant's former patients who  
9 described the incredible amounts of medication being provided to them by the  
10 defendant. Some of the most dramatic testimony came from Lana Rau. She testified  
11 that at the height of her addiction, she was taking over 100 pills a day provided to her by  
12 the defendant's prescriptions. If the Court were to consider the sheer volume of  
13 "clients" seen by the defendant and multiply that number by the potential number of  
14 similar prescriptions written, it would result in the diversion of thousands of pills a day to  
15 addicts and users throughout Southern California, and beyond. While not measured in  
16 "kilograms," that number of pills represents an enormous quantity of dangerous and  
17 potentially deadly narcotics that stem from the defendant's greed to make money at the  
18 expense of others' lives.  
19  
20

21 (6) California Rules of Court, Rule 4.421(a)(11)

22 *The defendant took advantage of a position of trust or confidence to*  
23 *commit the offense.*  
24

25 The defendant was a doctor. Indeed, doctors in society are trusted to live up to  
26 the oath they took to "First, Do No Harm." In this case, the defendant broke that oath on  
27 a daily basis and to thousands and thousands of addicts over the course of years.  
28

1 Defendant also took the extraordinary step of completely fabricating records to lie  
2 to the California Medical Board, demonstrating her complete abandonment of her  
3 governing body's duty to do no harm.  
4

5 After reviewing her fabricated records, experts from the Medical Board testified to  
6 the extreme deviation of the standard of care from which the defendant practiced  
7 medicine despite her feeble attempts to justify her actions. In some cases, the experts  
8 testified that her actions were so outside of the standard of care that to say they were  
9 an extreme departure was an understatement.  
10

11 IV.  
12 CIRCUMSTANCES IN MITIGATION

13 (1) California Rules of Court, Rule 4.423(a)(2)

14 *The victim was an initiator, willing participant, or aggressor or provoker of*  
15 *the incident.*  
16

17 While the victims in this case were willing participants, the doctor's role is to  
18 assist addicts, not create or facilitate their addiction. It's easy for society to redirect the  
19 blame for acquiring narcotics illegally to the user but it neglects to hold responsible  
20 those who are given the power to control and regulate those substances. Furthermore,  
21 the People's experts as well as the patients themselves testified that while one is in the  
22 throes of addiction, the ability to think rationally and properly is gone. The addiction  
23 fuels their every action and movement and prevents them from making decisions that  
24 are best for them. The doctor, however, who provides that very addict with the  
25 controlled substances to which they are addicted has a profound opportunity to help  
26 them, not hurt them. During trial, the defense routinely tried to shift the blame to her  
27  
28

1 addict clients, a theory whole-heartedly rejected by the jury given the convictions.

2 (2) California Rules of Court, Rule 4.423(b)(1)

3 *She has no prior record, or an insignificant record of criminal conduct,*  
4 *considering the recency and frequency of prior crimes.*

6 The evidence at a trial showed open, notorious and continuous actions of  
7 overprescribing by the defendant for years. The fact that the defendant wasn't  
8 criminally prosecuted until now does not negate the evidence that she has been  
9 committing these profitable crimes for years. The defendant settled multiple wrongful  
10 death civil lawsuits during this time period but continued to prescribe in a similarly  
11 reckless manner despite her admission of civil liability for her patients' death. The Court  
12 should consider the on-going nature of the crimes as opposed to the lack of punishment  
13 until this point.

15 In this case, the aggravating factors far outweigh those in mitigation.

17 V.

18 COMPUTATION OF SENTENCE

19 The People believe that counts 3 and 5, violations of Health & Safety Code  
20 section 11153(a) would merge with the greater count of a violation of Penal Code  
21 section 187(a) as it relates to Steven Ogle and Joseph Rovero, respectively, and  
22 therefore the defendant should not be sentenced as to those to counts. As to the  
23 remaining counts, the People's position is that each alleged charge is a different and  
24 distinguishable crime involving different victims on separate occasions; therefore, Penal  
25 Code section 654 would not apply. Indeterminate sentences are imposed pursuant to  
26 Penal Code section 1168(b) and are computed separately from determinative  
27  
28



1 sentences. Consecutive indeterminate sentences are imposed full-term, and the one-  
2 third formula of Penal Code section 1170.1(a) has no application to these terms. See  
3 People v. Jackson (1993) 14 Cal. App. 4<sup>th</sup> 1818, 1832-43; People v. Garnica (1995) 29  
4 Cal. App. 4<sup>th</sup> 1558, 1563 (citations omitted). Defendant's maximum sentence is 45  
5 years to life in state prison as to the three counts of second degree murder for which  
6 she was convicted. Additionally, one-third of the midterm on the remaining 18 felony  
7 counts amounts to an additional 12 years to be served in state prison prior to her  
8 sentence on the murder counts.  
9

10  
11 VI.

12 THE COURT SHOULD IMPOSE CONSECUTIVE SENTENCES AS TO THE MURDER  
13 COUNTS

14 California Rules of Court, Rule 4.425(a) sets forth the criteria affecting the  
15 decision to impose consecutive rather than concurrent sentences. They include, but are  
16 not limited to, whether or not the crimes and their objectives were predominantly  
17 independent of each other, whether or not they involved separate acts of violence or  
18 threats of violence, and whether or not the crimes were committed at different times or  
19 separate places.  
20

21 It should be noted that pursuant to California Rules of Court, Rule 4.425(b), the  
22 Court can also consider any circumstances in aggravation or mitigation in deciding  
23 whether to impose consecutive rather than concurrent sentences, except when a fact is  
24 used to impose the upper term to enhance a defendant's prison sentence, or was an  
25 element of the crime.  
26

27 Since the factors in aggravation outweigh the factors in mitigation, and the facts  
28

1 surrounding the case support imposing the high term, the People are requesting that the  
2 aggravating factors be used to support imposing consecutive sentences as to the  
3 murder counts alone.

4  
5 Here, the Court should impose consecutive sentences on the defendant for at  
6 least two of the three murder counts for all of the reasons stated above. Moreover, the  
7 three murders occurred on three different dates. There is no evidence that the victims  
8 had any relation to one another. The type of prescription that the defendant wrote that  
9 ended up killing each victim was a different type of narcotics, written on different dates  
10 and in different amounts from one another. The defendant's relationship with each  
11 patient was different: the defendant saw Steven Ogle multiple times and provided him  
12 prescriptions for Methadone, unlike the one visit Joseph Rovero paid to the defendant  
13 when she gave him Roxicodone.  
14

15  
16 Even more compelling is the fact that the defendant's act of prescribing killed  
17 three of her *previous patients*: Matthew Stavron, Ryan Latham and Naythan Kenney,  
18 prior to the charged acts. The evidence demonstrated that the defendant *knew* of these  
19 three overdose deaths, yet continued to prescribe controlled substances to Vu Nguyen,  
20 Steven Ogle and Joseph Rovero in a reckless manner knowing the possible  
21 consequences of her actions. This "learning curve" is what the People argued to the  
22 jury comprised implied malice and a subjective awareness of the dangers of the  
23 defendant's actions. Her callous reaction to these deaths and continued actions in  
24 providing prescriptions to young men who travelled great distances to see her are so  
25 aggravating as to justify consecutive sentences as two of the murder counts.  
26  
27

28 The People request that the Court imposed consecutive sentences on two of the

1 three murder counts, for a sentence of 30 to life, with the imposition of sentence on the  
2 remaining murder charge and on the determinative counts to run concurrently.

3  
4 VII.

5 CONCLUSION

6 This case represents the archetype illegal prescribing case that leads to the  
7 predictable and ultimate consequence of death. Defendant Tseng made an enormous  
8 amount of money off the misery of addicts. The defendant remains without remorse as  
9 evidenced by her reaction to the verdicts. It is clear that the defendant wishes to avoid  
10 responsibility for a career based on greed and not in the best medical care for her  
11 patients.  
12

13  
14 Dated this 4<sup>th</sup> day of December, 2015

Respectfully submitted,

15 JACKIE LACEY  
16 District Attorney

17 By

18   
19 JOHN NIEDERMANN  
20 Deputy District Attorney