

## The King is Dead :

Michael Jackson, Prescription Drugs and The Trial of Conrad Murray

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### THE KING IS DEAD

Having spent a majority of the last decade refuting defamation, Michael Jackson was scheduled to embark on a final vindication tour deemed “This is It.” Ramping up public attention, 360,000 tickets were sold before public sales commenced. Once available public purchases averaged at a rate of eleven per second.<sup>1</sup> From a business perspective, this led to the reality that Jackson’s depleting health was a contingency that could not be neglected. In the event that he was unable to perform as scheduled, AEG, the company managing the promotional aspects of Jackson’s tour, would be financially burdened with the liability of remuneration. Thereby, they hired Dr. Conrad Murray who was medically affiliated with the Jackson family.<sup>2</sup> AEG Live inherently relied on Murray’s expertise to secure their investment by serving as his in-house physician, nursing Jackson into peak physical condition and ensuring that he was capable of performing at each of his scheduled engagements. In this regard, Murray was compensated approximately \$150,000 per month for his discretion, prescription and his advisement six nights a week at the Jackson home.<sup>3</sup>

In accordance with standard autopsy protocol, an anesthesiologist was employed to review and thoroughly report on the drug interactions in Jackson’s system upon the coroner’s discovery of an anesthetic; in this case propofol. The findings by anesthesiologist Dr. Selma Calmes necessitated a 51-page report regarding the abundance of potential drug interactions as administered by Dr. Conrad Murray.<sup>4</sup> She observed that toxicology levels were “similar to those found during general anesthesia for major surgery.” Those conditions would require a patient to remain sedated while subject to acute pain. Dr. Calmes concluded that there was a plethora of potential factors that influenced the likelihood of Jackson’s demise but ultimately, that

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<sup>1</sup> Michael Jackson tickets sell out; BBC News March 13, 2009  
<http://news.bbc.co.uk/2/hi/entertainment/7941221.stm> (Last visited April 27, 2012)

<sup>2</sup> AEG Executive, Jackson’s Assistant Testify in Conrad Murray Trial,  
<http://losangeles.cbslocal.com/2011/09/28/aeg-executive-jacksons-bodyguard-expected-to-testify-wednesday/> ( last visited Mar 15, 2012)

<sup>3</sup> Dr. Conrad Murray, <http://www.biography.com/people/dr-conrad-murray-481814> (last visited Mar 01, 2012).

<sup>4</sup> County of Los Angeles: Department of Coroner, Investigator’s Narrative. Case Number 2009-04415 Decedent: Jackson, Michael (Last visited Mar 15, 2012).

overdose of propofol was the cause. In consideration of Calmes' report, Katherine Jackson (Michael's mother) filed a lawsuit asserting the liability of Dr. Conrad Murray who was responsible for medically advising and supervising Michael Jackson and hence, the most probable administrator of the lethal dosage. Murray was taken to trial on September 27<sup>th</sup>, 2011 in an action titled, *People of the State of California v. Conrad Robert Murray*.<sup>5</sup>

### A BRIEF HISTORY OF PROPOFOL AND THE FDA

The medical use of Propofol was an issue of controversy for several years prior to Jackson's death. The FDA recalled the drug and only reapproved it for use a few months prior to Jackson's overdose.<sup>6</sup> Once propofol was in the open market again, the medical community petitioned the FDA insisting that they relax mandatory protocol in order to make the drug more accessible. Appropriate administration qualifies "only persons trained in the administration of general anesthesia and not involved in the conduct of the surgical/diagnostic procedure." This means that for legally compliant administration of this particular drug, (1) two doctors must be present and (2) one must be an anesthesiologist explicitly and solely employed to monitor the patient, for the duration of the drug's administration due to commensurate, potential eventualities such as accidental death.

The FDA responded to the literature presented by practitioners stating medical literature suggesting the use of propofol for insomnia. Calmes commented on the "presence of other sedative drugs in the toxicology screen. Lorazepam (Ativan), a long-acting benzodiazepine, [was] present at a pharmacologically significant level and would have accentuated the respiratory and cardiovascular depression from propofol."<sup>7</sup>

The issue of Dr. Murray's liability applied in accordance with California Code of Civil Procedure § 340.5 "Professional negligence of health care provider; Tolling of time limitation." Hereby, professional negligence is deemed an "act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed" (Cal Code Civ Proc § 340.5).

The complexity of drug interactions and the possibility of varied opinions on appropriate medical treatment required the testimony of several witnesses. Steven Shafer, a pharmacology

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<sup>5</sup> *People of the State of California v. Conrad Robert Murray*, 2009-04415.

<sup>6</sup> Teva Pharmaceuticals USA issues a voluntary user-level nationwide recall of Propofol Injectable Emulsion 10 mg/mL 100 mL vials, lot numbers 31305429B and 31305430B, <http://www.fda.gov/safety/recalls/ucm172474.htm>, (Last visited Mar 1, 2012).

<sup>7</sup> *People of the State of California v. Conrad Robert Murray*, 2009-04415.

academic known for his profound ability to model the complexity of drug interactions, 20 year employee of the FDA and a “hero in the war on truth” in medical publication cited seventeen occasions of “separate and distinct egregious violations” committed by Murray while servicing Michael Jackson. During his spangled career, Shafer functioned as the Acting Chair on the FDA’s Anesthetic and Life Support Drugs Advisory Committee. <sup>8</sup>His discretion was revered via nationwide standards, which positioned his testimony as a challenging barrier for any defense team to refute. When asked, “Each one of these seventeen egregious violations is individually likely or expected to result in injury or death to Michael Jackson?” To which Shafer’s response was, “Yes.”<sup>9</sup>

In addition to Murray’s failure to properly administer propofol, which was identified as the catalyst in Jackson’s death, Murray administered many other drugs that are considered by the scientific community to be risky, experimental or habit forming without the supervision necessary for compliance with ethical practices. Additionally, competing side-effects such as increased heart rate and decreased heart rate, that would have ordinarily inhibited anyone practicing traditional medicine, were not appropriately considered and reflect Murray’s blatantly negligent bedside manner.<sup>10</sup> Typically, a cardiologist is respected due to their expertise as precisely aligned with this category of side effects. Murray’s malignant disregard perforated the veil between negligence and malpractice – both of which were legally admissible and neither of which were practically acceptable.

As a precedent in the state of California, Voluntary Manslaughter is ordinarily employed by defense attorneys in an effort to reduce a murder sentence. Involuntary Manslaughter, on the other hand, has its nature founded upon lawful acts which might produce death if performed in an unlawful manner; without due caution or circumspection.<sup>11</sup> In this case, killing is accomplished due to “criminally negligent manner” and is applicable to the conduct of Conrad Murray. Such an accusation is “punishable by imprisonment in the state prison for two, three, or four years.”<sup>12</sup> A jury concluded that Murray’s criminal negligence resulted in Jackson’s death. Murray was accused of violating California Penal Code § 192(b) and was consequently convicted.

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<sup>8</sup> <http://www.onthemedial.org/2011/sep/02/retraction-watch/transcript/>.

<sup>9</sup> People of the State of California v. Conrad Robert Murray, 2009-04415.

<sup>10</sup> i.e. leaving empty bottles out to collect bacteria, not monitoring the patient’s breathing or having the medically appropriate tools on hand.

<sup>11</sup> California Penal Code § 192(b).

<sup>12</sup> California Penal Code §193 -- Involuntary manslaughter; punishment.

**SENTENCING**

Conrad Murray was found guilty of involuntary manslaughter in the Superior Court of Los Angeles. He was sentenced to four years in prison and his medical license was revoked. He was ordered to cease practice within the state of California forever.<sup>13</sup> Although Murray was convicted, fortunately the jury overseeing his trial did not uphold the same standard of discretion as in the case of *People v. Dennis William Edwards*.

In the Edwards case, a jury convicted the defendant of murder for administering a lethal dose of heroin to his girlfriend. He was committing an unlawful act (just like Murray), illegally administering an intravenous drug (just like Murray), and accidentally killed the recipient without malice aforethought (just like Murray). However, Edwards was not professionally licensed, nor was he generously compensated to be mindful, knowledgeable and professional. Edwards was not revered for his discretion and credential. Edwards was not legally obliged to uphold a societal oath. Although the jury could agree that Edwards did not intend to kill his girlfriend, in this instance an accidental killing *without* malice aforethought was indeed considered murder; carrying a penalty of death. The question then remains, what differentiates Conrad Murray, PhD from Dennis William Edwards, heroin addict, aside from their status? Either Edwards did not commit murder or Conrad Murray did.

Dr. Murray was spared state prison upon his sentencing and instead was sent to the Los Angeles County Jail where L.A. County District Attorney Steve Cooley said, it is likely Murray will serve only a fraction of his sentence before being released. The court upheld the contention that Murray's violation was worthy of the revocation of all privileges to practice medicine, but upon closer analysis alarming inferences may be made.

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<sup>14</sup> California Penal Code § 192(a).

<sup>15</sup> California Penal Code § 192(b).

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Ignoring all wealth procured prior to his career with Michael Jackson, Conrad Murray was paid \$150,000 *per week* for his service. Provided the appropriate investment instruments Dr. Murray's wealth could be hard at work earning him a considerable living. His time in jail permits the appreciation of his wealth for up to four years all the while providing him an all-expenses paid residence in a state witness protection facility. Essentially, he was rewarded with an early retirement.

## CONCLUSION

Musical legends and celebrities are infamous for ending their careers via self-administered over dosages, including the recently deceased Whitney Houston. Jackson stands apart due to the absence of his volition and misjudgment in the overdose. His doctor, Conrad Murray grossly overprescribed a relatively common ailment and did so with a historically controversial drug. Then, he failed to adhere to supervisory obligations as deemed appropriate by the FDA.<sup>17</sup> As a matter of fact, the exact stipulated language that held him accountable was legally debated, deliberated and reiterated by the FDA less than one year prior. Propofol was trivially administered and as a result Jackson was dead before Conrad Murray even noticed.

This landmark case, which had the potential to offer paramount implications to the medical community, became a lackluster, wasted opportunity. Malpractice considerations function as the final construct in the interest of maintaining medicine's connection to humanity. The legal field's bias is more than just a disappointment to the community; it is an epidemic disservice due to the fact that the relevance of consequences in the medical community supersedes that of any other industry known to man.

The resonance of Murray's conviction was morally shallow, as it served only to create media frenzy versus addressing the trend of indiscretion in pharmacology, altogether. Had it been in the interest of the institutional stakeholders to hold Murray accountable to the fullest extent of the law, there was a precedent case under which Murray could have been prosecuted.

Sentencing Edwards allowed for the penal system to martyr a socially undesirable individual, and pulled a junkie off the street--two if you count his dead girlfriend. Murray's case on the other hand afforded a showcase: the righteousness of the penal system, the discretion of the FDA, the fairness of the judicial system and the candor of the media. This onslaught of misappropriated attention eulogized the King and all of the things he represented: talent, innovation but most importantly, soul.

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<sup>17</sup> AEG Executive, Jackson's Assistant Testify in Conrad Murray Trial, <http://losangeles.cbslocal.com/2011/09/28/aeg-executive-jacksons-bodyguard-expected-to-testify-wednesday/> (last visited Mar 15, 2012).

It would appear that professionalism, in the most fundamental sense of “-isms” has become a clique within which murder may go inadequately punished, based on symbiosis between institutions. And unfortunately it would seem that the self-righteous public was only interested in a good show. *This Is It* came out on DVD and from the comfort of their living rooms people quenched their resentful thirst for the final spark of a falling star.