

The Products Liability Case Against Tianeptine: The Deadly ‘Dietary Supplement’ Found at Your Local Store

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When 32-year-old graphic designer Matthew Cornier decided to work late, he went to a convenience store and purchased several shot-sized bottles of Neptune’s Fix, a purported dietary supplement sold with a claim that it will improve mental focus. Several hours later Cornier was found dead in his office after only having consumed one bottle.

Unbeknownst to Cornier, and many other users of Neptune’s Fix, this innocent-appearing product—sold at convenience stores, gas stations and smoke shops—and marketed as “Happiness in a Bottle” contains a dangerous ingredient called tianeptine, which is unregulated in the United States. To be clear: tianeptine does not meet the statutory definition of a dietary supplement, according to the U.S. Food and Drug Administration (FDA). While in some European, Asian and Latin American countries tianeptine has been approved in low dosages for medical use as an antidepressant, it has not been approved for any medical use in the United States. Neptune’s Fix and other products with tianeptine have been “illegally sold with claims to improve brain function and treat anxiety, depression, pain, opioid use disorder and other conditions,” according to an FDA warning issued on Nov. 21, 2023.

The FDA further warns that both Neptune’s Fix and tianeptine have been associated with severe adverse events including seizures, loss of consciousness



Courtesy photos

John M. Dodig, left, and Jason A. Daria, right, of Feldman Shepherd Wohlgelechner Tanner Weinstock Dodig.

and death. As tianeptine is highly addictive, abuse and withdrawal from it can mimic opioid toxicity and withdrawal, according to the U.S. Centers for Disease Control and Prevention (CDC). Look no further than the internet for stories of people who are so hooked that they spend hundreds of dollars a day on tianeptine products to prevent withdrawal. Colloquially, tianeptine has been called “gas station heroin,” even though innocent consumers like Cornier may purchase it from their local store, unaware of the danger.

Shortly after Cornier’s death, the two companies behind the manufacture and distribution of Neptune’s Fix—Neptune Resources, LLC and Super Chill CBD Products—announced a voluntary recall of all Neptune’s Fix products. As with all product recalls,

there undoubtedly will be Neptune's Fix products that are not returned or destroyed, but instead are unaccounted for and continue to put unsuspecting consumers at risk. The recall by Super Chill is problematic because, according to an FDA warning issued on Feb. 15, 2024, Super Chill has not issued a public notification to inform consumers of its recall.

Nor does the Neptune's Fix recall solve the wider problem of other tianeptine products that are still available for purchase. These products include Tianaa, Zaza and Pegasus. Nor does it address the limitations of the FDA's authority and resources that have allowed tianeptine products to perpetuate in the marketplace.

According to the American Medical Association, there are 50,000 to 80,000 dietary supplements sold in the United States, all of which fall under the FDA's purview. The FDA does not have the authority to approve dietary supplements for safety and effectiveness, or to approve their labeling, before they are sold. The agency—whose charge is to protect public health by “ensuring the safety, efficacy and security” of a range of products—operates in a regulatory framework where it may be simply unaware of a product until there is a serious problem. While the FDA has the authority to take action against any adulterated or misbranded dietary supplement product after it reaches the marketplace, by then the product is in the hands of consumers, and the FDA must play catch-up.

In this environment, tianeptine abuse has become an extreme public health concern. In 2013, only four cases of tianeptine exposure were reported nationwide. That number skyrocketed to 391 cases in 2023, according to America's Poison Centers. The problem is undoubtedly worse than what the data reflects, as reports to poison control centers are voluntary. In addition to Cornier, several other people have reportedly died after taking tianeptine products.

Tianeptine injuries and deaths will continue so long as companies continue to pump tianeptine products into the marketplace, falsely cloaked as dietary supplements. While not meant to be exhaustive, this article offers practice tips for when a family contacts you about a potential tianeptine death case.

Immediate Steps

When a potential client contacts you with a case that may involve a death from a tianeptine product, here are the immediate steps you must take:

Obtain the Autopsy and Toxicology Reports. These reports are critical to connect the cause of death to the tianeptine product as well as to establish that nothing else in the decedent's system was potentially fatal. Note that the CDC warned in February 2024 that Neptune's Fix may be contaminated with different types of synthetic cannabinoids. These cannabinoids may show up in the toxicology report.

Obtain the Police Report and Photos From the Police Investigation. In Cornier's case, the police photos showed the empty bottle of Neptune's Fix and other unconsumed bottles that he had purchased. The manufacturer of Neptune's Fix has maintained that there are counterfeit products in the marketplace. Photos, as well as the actual packaging, may be critical in the event that a manufacturer attempts to raise a defense that the product consumed was a counterfeit.

Preserve Evidence. As applicable, send letters to local, county, state and federal law enforcement to preserve all evidence. If the product was purchased at a brick-and-mortar store, send a letter requesting preservation of all surveillance video that shows the victim purchasing the product, as well sales receipts and other records, including records of electronic transactions. If possible, the victim's family should check charge card statements and other records that may provide evidence of purchase.

Identify All Potential Defendants in the Distribution Chain and Ascertain Insurance. Due to the unregulated nature of the dietary supplement industry, some manufacturers of tianeptine products may not have liability insurance. Theories of liability against the seller and distributor of the product may be critical to achieving a financial recovery. Also, consider putting the manufacturer, distributor and seller on notice of a potential claim, especially if there is any concern about other claims or a potential bankruptcy.

Conduct an In-Depth Interview with the Family. Lines of inquiry should include the victim's history of use of the product, the family's understanding of why it was purchased, and the victim's history with addiction, if any. Note that some companies have made dangerous and unproven claims that their tianeptine products can be used to treat opioid use disorder, and some consumers have turned to these products under the mistaken belief that they are a safe alternative to

street opioids, or that they can use tianeptine to help taper off street opioids.

Retain Experts

Experts to consider in a tianeptine death case include:

- The medical examiner or an outside forensic pathologist who can establish that the product caused the decedent's death.
- Toxicologists
- Pharmacologists
- Experts that can establish inadequate product labels and warnings
- Forensic economists

Documents, Records and Depositions to Seek in Discovery

Counsel should request the following information from the manufacturer, distributor and seller of the product:

- All bills of lading establishing the chain of distribution.
- History of product development and testing.
- Reports of other incidents involving the product, regardless of whether they resulted in injury or death.
- All communications with the FDA.

Also, consider filing a Freedom of Information Act request with the FDA to obtain nonpublic documents related to its safety concerns.

After reviewing the information received from the manufacturer and other sources, notice the depositions of all persons involved in the creation, testing, distribution and sale of the product. A corporate designee involved in the receipt and documentation of consumer complaints and injuries should also be deposed.

Legal Claims Available

In general, possible legal claims include: strict products liability, negligence, consumer fraud, recklessness, survival and wrongful death.

Punitive damages should be sought particularly when it is considered that tianeptine is not approved for any medical use in the United States, but has been illegally sold directly to consumers, with false

and misleading claims, while mixed with unlabeled ingredients. It is also worth noting that in the murky world of unregulated dietary supplements, there is no guarantee that the potency of a tianeptine product will not change from batch to batch. See Seale, J.T.; Garden, E.A.; French, J.M.T.; McDougal, O.M. Analysis of Tianeptine in Dietary Supplements. *Nutraceuticals* 2023, 3, 481-488. <https://doi.org/10.3390/nutraceuticals3030034>.

The Future

The grave public health concern posed by tianeptine has caught the attention of lawmakers.

As of January 2024, at least 12 states have banned the sale of tianeptine, according to the FDA. The bipartisan STAND Against Emerging Opioids Act is presently pending in the U.S. Congress and would add tianeptine and all of its analogues to Schedule III of the Controlled Substances Act, making it illegal to sell without a prescription. In Pennsylvania, House Bill 977 would criminalize the manufacture, distribution and possession of tianeptine. The bill has received push-back from some lawmakers who believe that imposing criminal penalties on people who suffer from substance use disorders will not solve the problem. In New Jersey, Senate Bill 729 would establish tianeptine as a Schedule II controlled dangerous substance.

Plaintiffs products liability attorneys are a necessary part of the solution. As trial attorneys, we know that litigation is a powerful impetus for public safety. The publicity of lawsuits involving tianeptine products coupled with financial accountability in litigation will, over time, dispel false information and help to remove tianeptine products from the marketplace.

Editor's Note: The authors of this article represent Matthew Cornier's family in a wrongful death products liability lawsuit filed against Neptune Resources, LLC, Super Chill CBD Products and Hometown Market—Pt. Pleasant, LLC in the Superior Court of New Jersey, Middlesex County.

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