

Pain Management: A Double Standard?

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Two weeks from now, a South Carolina pain management physician will surrender at the Talladega, Alabama, prison to begin serving a 2.5-year sentence for drug trafficking, racketeering, and money laundering.

Dr. Michael Jackson is one of hundreds of pain management specialists arrested, charged and jailed by federal and state authorities for violating the Controlled Substances Act, designed to limit the dispensing of illegal prescription drugs by doctors and their use by patients.

Meanwhile, the high profile right-wing radio talk show host Rush Limbaugh, charged with "doctor shopping" for prescription medication for chronic back pain, reached a settlement with the Florida State Attorney, which his attorney said will be dismissed in 18 months if Limbaugh complies with court guidelines. As a primary condition of the dismissal, Limbaugh must continue to seek treatment only from the doctor he has seen for the past 2.5 years.

In an interview, Dr. Jackson said the contrast between his treatment and Limbaugh's underlines "a widespread double standard - one for the 'haves' and another for the 'have-nots'."

"Not only do celebrities have access to the best lawyers, but they utilize their status in society, as I would have, if I were a 'somebody', Dr. Jackson told us.

He said, "The 'haves' include a long list of individuals", in addition to Limbaugh -- Senator Edward M. Kennedy's son, Congressman Patrick Kennedy, Miami Dolphins' football star Ricky Williams, former baseball great Darryl Strawberry, Florida Governor Jeb Bush's daughter, Noelle, former Pittsburgh Steelers football quarterback Joe Gilliam, and a multitude of other athletes, movie stars and family members of the well-to-do", Dr. Jackson charged.

He added: "As for the 'have-nots', there is only one group to mention -- the poor. With few exceptions, they're the ones that fill the jails. And the 'haves' who have gone to jail only did so because they violated their probations; otherwise, they would be in rehab," Jackson told us. He said these included Strawberry, Downey, Gilliam and Noelle Bush.

"In order to get illicit street drugs, you have to break the law. All these celebrities did so, yet they were given a choice of jail verses rehab. They made the prudent choice but blew it anyway," Dr. Jackson said, adding, "Addiction is a tough taskmaster."

Limbaugh's attorney was famed defense lawyer Roy Black of Miami. Dr. Jackson was represented by a court-appointed public defender - he could not afford to hire an attorney because revocation of his DEA registration meant he could not practice and thus had no income. Limbaugh was also helped by the American Civil Liberties Union (ACLU), an organization frequently a target of Limbaugh's on-air attacks.

When investigators in Florida seized Mr. Limbaugh's medical records for its probe of whether the radio commentator illegally purchased thousands of prescription painkillers, the ACLU cited violations of the broadcaster's constitutional right to privacy. The ACLU insists that defending the privacy of Limbaugh's medical records is consistent with its mission to protect the sanctity of the Bill of Rights.

Limbaugh's lawyers succeeded in getting his medical records sealed. He voluntarily checked himself into voluntary drug rehabilitation for five weeks last year after press reports surfaced that his former housekeeper acted as his middleman in a scheme to buy painkillers for him over the years.

Over the past several years, the federal Drug Enforcement Agency (DEA), cooperating with state and local law enforcement authorities, has been conducting an aggressive campaign against pain management physicians and their patients. The DEA is part of the US Department of Justice. Its primary target is a prescription painkiller called Oxycontin, a drug in the opioid category, which the DEA says is being over-prescribed. It claims that prescriptions for this medication frequently end up being illegally sold on the street by drug dealers.

The DEA-State campaign has resulted in the widespread arrest and jailing of both doctors and their patients - many for long sentences. The DEA defends the campaign as an important part of the "war on drugs," but has been widely criticized by State attorneys general, professional medical associations, and pain management advocacy groups.

Dr. Jackson's case was part of a prosecution known as "The Myrtle Beach Eight." The eight physicians were all associated with a pain clinic in Myrtle Beach, South Carolina. The accused also included Dr. Michael Woodward, the owner of the clinic, the Comprehensive Care and Pain Management Center.

According to Dr. Jackson, "Dr. Woodward was coerced into plea bargaining against the other physicians including myself. He perjured himself by implying that there was a

conspiracy to distribute opioids illegally. As a result of this conspiracy charge, a motive to commit a crime does not have to be proved."

Jackson was charged in June 2001 with manslaughter, over-prescribing of opioids, prescribing opioids without a legitimate medical reason, and prescribing the drugs to patients with whom he had no legitimate doctor-patient relationship.

The first step in his prosecution was revocation of his DEA registration, effectively putting an end to his medical practice and his source of income.

He was forced to use his house as collateral to raise the \$25,000 bond that has kept him out of jail for the past five years while his appeals moved forward.

He was found guilty after a jury trial in Federal Court in Florence, South Carolina, between January 31 and February 10, 2002, and sentenced to 25 years in prison. The verdict was upheld on appeal to Fourth Circuit Court of Appeals, but the 25-year sentence was reduced to 2.5 years after the prosecution dropped the manslaughter charge -- it was revealed that the patients who overdosed and died from multiple drug abuse were not his patients. Dr. Jackson appealed to the US Supreme Court, but the high court declined to review the case

Dr. Jackson claims the DEA often charges physicians with more serious crimes such as manslaughter to give them an excuse to revoke a doctor's DEA registration.

Other physicians associated with the "Myrtle Beach Eight" have also been prosecuted. Dr. Deborah Bordeaux received a sentence of eight years and one month for being included in an alleged conspiracy to prescribe medications such as OxyContin. Her sentence was based on working for only 57 days at the pain clinic. Dr. Ricardo Alerre, a 74-year-old physician at the clinic, was sentenced to 19 years and seven months in prison. Drs. Deborah Sutherland and Thomas Devlin received two years each. Dr. Benjamin Moore, who pleaded guilty, committed suicide prior to sentencing.

In response to a plea to reduce Dr. Alerre's sentence based on his age, US District Judge Weston Houck said the law doesn't allow it: "I'm convinced in my mind that Dr. Alerre is a good person; and you'll never see him in jail again, but I'm not going to break the law."

"I believe and I hope that this case has sent a clear message to the medical community that they need to be sure the controlled substances they prescribe are medically necessary," said Assistant US Attorney Bill Day. "If doctors have a doubt whether they could get in trouble, this case should answer that."

"I've done everything by the book; I don't even have a parking ticket," Dr. Jackson said at sentencing. "I think this is just a mistake the government made."

The DEA and its state and local associates have been just as tough on patients. One, wheelchair-bound Richard Paey, has become a kind of poster child for patient

prosecutions. A victim of multiple sclerosis, Paey was convicted in Florida's third attempt concerning his use of painkillers. The 45-year-old Mr. Paey turned down an offer of probation based on principle but has now been given a mandatory minimum sentence of 25 years in jail.

Paey's supporters say he was unable to find medical help to ease unbearable pain. He was not convicted of selling any medication, and even the prosecutor admitted he used the pills himself. In prison, he is on a morphine pump that administers more pain-killing medication than he was accused of taking before he went to prison.

Physicians' organizations say that one of the worst consequences of the DEA's campaign against Oxycontin is that doctors are being cowed into giving up the practice of pain management - precisely at a time when science is discovering more effective methods of palliative care.

The doctors charge that DEA agents are not physicians and are not trained to make medical judgments.

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