

Update on Dr. Bordeaux's Case from the Pain Relief Network

Siobhan Reynolds; Pain Relief Network; 2004-03-14

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[Source: <http://www.cpmmission.com/main/deborah.html>]

[See also: [War on Pain Sufferers Special Collection #6 – The Myrtle Beach Massacre](#)]

Dear All,

I'm in Florence, South Carolina awaiting tomorrow's hearing on Dr. Bordeaux's motion for release pending appeal. Eli D. Stutsman, the attorney I hired (PRN has hired) for Dr. Bordeaux following her mistaken conviction, has prepared a solid argument and she meets all the criteria for the judge to have the discretion to leave her out as we argue her case in the 4th Circuit, and, if necessary, beyond.

The most important criteria is whether or not a substantial question of law is at issue in the appeal. In her case (and this transfers over to all the defendants in the Comprehensive Care case) there is indeed a substantial issue of law.

Apparently the DOJ and DEA tried and convicted her on standard of care evidence (their expert says he wouldn't have prescribed that pill to that person at that time) rather than on the right kind of evidence (that there was evidence of her dealing drugs or something like that, which of course there was not). Further, her counsel was ineffective because they failed to provide her with the defense she is entitled to under the Controlled Substances Act, i.e., that the prescribing in question was in the course of her professional practice, a defense which calls upon the government to show that it was not.

Both the defense and the prosecution got into a debate about whether the prescribing was medically necessary and such. This is a civil notion having to do with reimbursement and is not relevant to a criminal proceeding.

During the trial Judge Houck asked Bill Day the prosecutor if the phrase "medically necessary" was in the statute. The prosecutor replied, "Yes, sir. We tracked the statute in the indictment. If it's medically necessary, they haven't done anything wrong. If it's not medically necessary, they are drug dealing. So that's a huge issue, your honor. It could be the whole issue."

The problem for the U.S. is that the statute nowhere mentions medically necessary and medical necessity is not at all similar to the course of professional practice standard.

The DEA was not empowered by congress to regulate medical practice. The CSA does not require the physician's prescribing to be medically necessary nor, as Karen Tandy

recently mischaracterized her agency's mandate, that the prescribing has to be within medical norms. The CSA was intended to punish doctors who are drug dealing, not doctors who are practicing progressive medicine.

So, of course, the pressure is indescribable. We hope that the judge will allow Dr. Bordeaux to remain out while we fight for the autonomy of medical practice in the 50 United States, free of imperatives imposed by a politically motivated federal government.

Siobhan

Family Member of a Chronic Pain Patient

Founding Executive Director, PRN

<http://www.PainReliefNetwork.org/>

"Standing up for patients in pain and the doctors who treat them"

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