



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

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Dear Ms. Tandy,

As US v Hurwitz draws to a close, I call upon you to rethink your approach to this important matter and to weigh the implications for the American people, should your agency secure a conviction.

Our system for regulating medical practice was set up so that medical conduct would be evaluated by physicians, in the context of state medical boards. Instead, the Controlled Substances Act (CSA), combined with your agency's interpretation of this legislation has produced a different result. What began as an effort to address those rare instances where a physician departed the practice of medicine and instead dealt drugs, has evolved into a travesty of justice. Over the years, case law has moved the issue argued in court so far from what was originally intended, that a physician's allegedly negligent errors in medical judgment have become admissible as circumstantial evidence of criminal intent. As a practical matter, the practice of pain management is currently regulated by US attorneys, under the threat of federal criminal prosecution, a troubling outcome that lawmakers who enacted the CSA could not have foreseen.

Evidence presented by the government has revealed beyond a shadow of a doubt that Dr. Hurwitz was set upon, and victimized by a gang of criminal predators whom he treated in good faith for their well-documented complaints of chronic pain. What the government has not produced is even a shred of direct evidence that Dr. Hurwitz intended to deal drugs.

In essence, the government's charges, as they now stand, accuse Dr. Hurwitz of doing a poor job of policing his practice against the criminal diversion of drugs. Effectively, the charges state that he was a bad law enforcement officer who failed to detect the criminal

activity of a ring of career criminals acting entirely without his knowledge or consent. How this set of facts could ever be construed as criminal conduct on his part sheds light on the fundamental unfairness of the proceedings against him, particularly in view of the fact that your agency was aware of the criminal activities of a sub segment of his patient population, and could have put a stop to it at any time.

Nevertheless, Dr. Hurwitz is now forced to prove his innocence concerning complex and socially controversial medical judgments, before a lay jury, a jury which has been privy to the most prejudicial kinds of evidence imaginable. Whether a jury of lay people can process all of this inappropriate testimony and still keep their minds open to the legal question at hand remains to be seen. The situation represents a dilemma for all concerned.

Primary care physicians play an essential role in the management of chronic pain. As you are aware there are not nearly enough experts to deal even with the challenging patients for whom specialist referral is appropriate. As a result of your agency's recent enforcement efforts, prescribing by primary care physicians is already substantially impeded. In many parts of the country, pain care is unobtainable. How are the primary care physicians, practicing on the front lines of medical care to approach this humanitarian, and public health disaster?

My concern is this. Should you achieve a conviction against Dr. Hurwitz, a distinguished physician whom the medical community holds in high regard, you will have established beyond a shadow of a doubt, your agency's power to characterize as criminal, a physician's well-intended, and compassionate care of suffering patients, and you will have done so entirely on the basis of evidence that should only have been brought before a state medical board, if there. Should your agency succeed in burning Dr. Hurwitz at the stake, I am gravely concerned that the entire field of pain management will shut down forthwith. Certainly no primary care physician in his right mind will be willing to risk the chance that your agents might arrest some of his patients, and then proceed to influence them to testify against him in federal court.

Ms. Tandy, the entire pain community has recently become aware of the methods through which your agency secures the convictions of well-intentioned primary care physicians. These include the beggaring of providers, the polluting of jury pools through prejudicial media stories characterizing well-intentioned physicians as "crack dealers in white coats", and most alarmingly, the purchasing of corrupt and misleading expert testimony, offered by anti-opioid zealots, who lurk at the fringes of the discipline of pain management.

If under these circumstances you succeed in convicting this compassionate and skilled physician, you will have succeeded only in condemning our nation's most vulnerable population, those who suffer from severe chronic pain, to vastly shortened lives, without care, and without hope. If Dr. Hurwitz is acquitted, the result will be only slightly better, as the medical profession will still remain in a state of panic. Neither outcome is even

close to acceptable, and surely not what you, or anyone else wishes.

The time has come to end this madness. We at Pain Relief Network implore you to pursue the only sensible and humane course of action. Withdraw the charges against Dr. Hurwitz, and join with us in our call for a Commission on Pain, which will look for solutions to the terrible problem of under treated chronic pain in the United States. It is our fervent hope that in evaluating this request, that you will place a priority on the needs of suffering Americans.

Sincerely,

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