

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT**

RUSH LIMBAUGH, Appellant

v.

CASE NO. 4D03-4973

STATE OF FLORIDA, Appellee

**MOTION OF THE NATIONAL FOUNDATION FOR THE TREATMENT OF PAIN, THE
FLORIDA PAIN INITIATIVE AND THE ASSOCIATION OF AMERICAN PHYSICIANS
AND SURGEONS FOR LEAVE TO FILE *AMICUS CURIA* BRIEF**

Pursuant to Florida Rule of Appellate Procedure 9.370 the National Foundation for the Treatment of Pain, the Florida Pain Initiative and the Association of American Physicians and Surgeons, by and through counsel, request leave to file a brief *amicus curia* brief in support of Appellant Limbaugh.

Appellant is the subject of a criminal investigation by the State based on allegations that he is a “doctor shopper”. Specifically, the investigation is aimed at determining whether appellant violated provisions of 46 Fla. Stat. § 893.13 (7)(a)(8) and (9), which makes deceit or fraud in obtaining controlled substances and the failure to tell a doctor that one is obtaining pain medication from another doctor felonies. To further its investigation, the state obtained search warrants under the “probable cause” standard and seized the entirety of appellant’s records from three Florida physicians. Despite constitutional and

procedural arguments, the trial court refused to halt review of the entirety of medical records seized by law enforcement. This appeal followed.

Pain is woefully undertreated in Florida and elsewhere. The *amici* are organizations that advocate for improvements in pain management and pain management access. All are deeply aware of the costs of loss of physician-patient confidentiality and patient privacy that the subpoenae at issue here represent. *Amici* request leave to participate so as to inform the court of the importance and immediacy of these issues to health care in Florida. Much more is at stake than the furtherance of a routine drug investigation.

The National Foundation for the Treatment of Pain (“NFTP”)

NFTP is a not-for-profit 501(c)(3) corporation organized under the laws of Texas. NFTP is dedicated to providing support for patients who are suffering from intractable pain, their families, friends and the physicians who treat them. It is also a resource for health care professionals and others concerned with legal issues regarding the legitimate treatment of pain. NFTP’s members include Florida residents who suffer from untreated or undertreated chronic intractable pain. NFTP’s purpose is to make legitimate, comprehensive, caring and state of the art pain treatment available to every American, using all modalities of care.

The Florida Pain Initiative (“Florida Pain”)

Florida Pain is a state-wide not-for-profit organization with offices in Tampa, Florida. It is an association of health care professionals including physicians, nurses, pharmacists, social workers, nurse practitioners and physicians’ assistants. It is one of the organizations that form the Alliance for Cancer Pain Initiatives. Its mission is to improve the quality of life of Florida residents by using education, clinical practice and patient advocacy to

improve pain care. It develops and implements educational programs for patients, public sector, students, and health care professionals to improve knowledge regarding pain, its consequences and management; and it fosters communication and collaborates with legal and regulatory bodies, as to assure access to optimal pain management for all Floridians. It brings an important local perspective to issues of untreated and undertreated pain.

The Association of American Physicians and Surgeons (“AAPS”)

The Association of American Physicians and Surgeons is a nationwide not-for-profit organization organized under the laws of Indiana. It is a membership organization of physicians dedicated to insuring the highest ethical standards in the practice of medicine and as a voice of physicians in policy matters. Among its members are physicians who are Florida residents. The Association is deeply concerned by the intrusion of law enforcement into medical judgment and medical care of patients whose pain is best controlled by opioid medications and other controlled substances. It has an immediate interest in the privacy of physician-patient communications. The AAPS brings the unique viewpoint of its members to the issues to be raised in the Amicus Brief.

One of the reasons that pain is undertreated is that doctors fear legal and regulatory consequences. Florida has become one of the epicenters of physician prosecution. The consequence is that many Florida physicians flatly refuse to prescribe opioids—oxycodone, morphine, methadone and the like-- for pain even when they are clearly indicated. This climate of fear distorts the physician-patient relationship, medical decision-making, and medical ethics. It causes great suffering and virtually forces chronic pain patients into the hinterlands of medical care. It is also costly for the State in terms of medical care and claims.

Pain patients who are fortunate enough to find a doctor who is sufficiently compassionate and brave to prescribe opioid medications absolutely require medical records and doctor-patient communication privacy. They are stigmatized as “addicts”. The fact that a patient is known to be taking opioids—particularly OxyContin—can be grounds for loss of employment, family and social approbation and great personal distress. In this light, today’s pain patients are as vulnerable to discrimination as HIV-positive persons were twenty years ago. They are also vulnerable to misinformed law enforcement, which also equates them with addicts.

The Amici request leave to file a brief in support of appellant that will provide information they believe will be directly useful to the court in its consideration of the merits of this appeal. The balance of individual and state interests should not be made without taking these factors into account.

WHEREFORE, Amici request the granting of this motion for leave to file their brief *amicus curiae*.

Respectfully submitted,

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January 20, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Leave to File Amicus Brief has been served by first-class mail, postage prepaid upon James L. Martz, Esq., Assistant State Attorney, 401 North Dixie Highway, West Palm Beach, FL 33401, Roy Black, Esq., Attorney for the Appellant, 201 South Biscayne Blvd., Suite 1300, Miami, FL 33131, Jon May, Esq., Attorney for the American Civil Liberties Union of Florida, Inc., 110 SE 6th Street, Suite 1970, Ft. Lauderdale, FL 33301, Randall C. Marshall, Esq., ACLU Foundation of Florida, Inc., Attorney for the American Civil Liberties Union of Florida, Inc., 4500 Biscayne Blvd., Suite 340, Miami, FL 33137-3227 by mail delivery on this ____ day of January , 2004.

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