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A caring doctor - or a drug peddler?

Jury's verdict could influence how patients are treated for their pain

February 17, 2009 | By Vanessa Blum Staff Writer

With guns drawn, a dozen federal agents stormed a nondescript South Florida office on Feb. 11, 2008, to arrest a drug suspect.

The alleged culprit was not a cocaine importer or marijuana grower. He was a state-licensed physician, charged with prescribing medication that caused the death of a man from Palm Beach County.

Today, when the case goes to trial in Miami federal court, it will fall to jurors to decide whether Dr. Ali Shaygan was a compassionate doctor or a drug dealer peddling prescriptions to addicts.

His case is part of a national debate over who should set the standards for medical practice and how much responsibility doctors bear when they prescribe powerful drugs.

Since 2003, nearly 400 physicians nationwide have been charged with prescription-related offenses, many under tough federal statutes intended to fight drug trafficking, according to the Drug Enforcement Administration.

Of those cases, 51 involved Florida doctors. It is unclear how many were in South Florida, but the region leads the state in deaths from prescription drug overdoses.

Authorities lay some blame for the abuse of prescription drugs on unscrupulous doctors and have been cracking down on those they claim are willing to supply drugs to addicts and dealers.

But some lawmakers, medical professionals and patient advocates say such prosecutions make physicians afraid to prescribe the proper medication, even to those who need it.

"As a result, we have an epidemic of untreated and under-treated pain," said David Brushwood, a professor of pharmaceutical regulation at the University of Florida.

Garrison Courtney, chief of public affairs for the DEA, said there is no evidence the agency's investigations hamper legitimate prescribing.

"Doctors know if they're practicing within the confines of the law, there's not an issue," he said.

A key question in Shaygan's trial will be whether the Miami Beach doctor, who agreed to meet patients late at night and at his home, performed adequate examinations before writing prescriptions for powerful narcotics.

At the center of the government's case is 29-year-old James "Brendan" Downey, of West Palm Beach, who died of a drug overdose in June 2007. If the jury finds Shaygan responsible, he would face a minimum of 20 years behind bars.

Shaygan, 37, completed his residency at the prestigious Mayo Clinic and specialized in family medicine. He treated Downey on three occasions and wrote him prescriptions for methadone and Valium, court records state.

Downey filled his last prescription on June 9, 2007. He popped several pills before going to sleep that night, his girlfriend told investigators, and never woke up. According to the government toxicology report, fatal levels of methadone were found in Downey's blood.

Prosecutors contend that makes Shaygan responsible, but the evidence is hardly clear-cut, according to the doctor's lead attorney, David O. Markus.

Markus said Shaygan had good cause to prescribe medication for Downey, who broke his ankle in a 2005 car accident. Moreover, an autopsy showed Downey was a heavy cocaine user and had cocaine and other drugs in his system when he died, Markus said.

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Prescription bottles with Shaygan's name were found in Downey's bedroom, but so were prescriptions from other doctors, Markus said.

After Downey's death, two undercover police officers posing as patients visited Shaygan's office. Prosecutors will tell jurors that each received numerous prescriptions after minimal examination, proving Shaygan was more interested in recruiting customers and earning a profit than providing medical treatment.

Markus has a different take: "These agents went in and acted like real patients."

Stories like Shaygan's convince many general practitioners that it's simply too risky to prescribe certain drugs regardless of medical need, said Dr. Sanford Silverman, a Broward County pain and addiction specialist.

Like many in his field, Silverman said he requires patients on narcotic pain medications, such as Oxycontin and hydrocodone, to sign contracts and submit to random drug screening. Such tests can be used to confirm patients are taking medications as prescribed or detect signs of illicit drug use. Silverman never prescribes such drugs on the first visit, he said.

"The run-of-the-mill physician out there may feel that it is too much to be bothered with," he said. "Inevitably, that affects the patient."

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INFORMATIONAL BOX:

Trial at a glance

Defendant: Dr. Ali Shaygan, 37.

Charges: 141 counts of prescribing drugs "outside the scope of medical practice" and without "legitimate medical purpose."

To convict: Government must prove Shaygan acted as a drug dealer, rather than a doctor.

Possible sentence : 20 years to life if convicted on all counts.

For the prosecution: Sean Cronin and Andrea Hoffman

For the defense: David O. Markus, **Marc Seitles** and Robin Kaplan

Presiding: U.S. District Judge Alan Gold

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