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The War on Pain Sufferers **by Sheldon Richman**

A good deal of air is exhaled over the state of medical care in America. Extreme state worshipers want a complete government takeover, while a more subtle band of state worshipers, the kind who like to call themselves advocates of limited government, proposes instead to use “market incentives” to accomplish its aims. What neither party wants is to let free individuals choose their own aims, applying their own means (incomes) to accomplish them.

The pseudodebate is useful — to the pseudodebaters, that is — because it keeps people’s minds off the real government-induced medical scandals, of which there are many.

For example, if you look carefully, you will learn that people who suffer chronic pain are routinely undertreated because their doctors fear that the U.S. Drug Enforcement Administration (DEA) will accuse them of being drug pushers, destroy their practices, wipe them out financially, and throw them into jail for good measure. This is no exaggeration. Doctors have even been charged with murder when a patient dies an apparently drug-related death.

The most recent case involved Dr. William Hurwitz, 59, of McLean, Virginia, who was convicted in December on 50 drug and conspiracy charges. The government is seeking life imprisonment for Hurwitz. What did he do? He treated many chronic-pain sufferers with opioids. The government claimed that a small percentage of them were faking and didn’t “need” the drugs. Some might have sold them in the black market. The prosecutors did not argue, much less prove, that Hurwitz actively conspired with anyone. Rather, they relied on a tacit-conspiracy theory, counting on the drug-hysterical jury to convict. They were not let down.

The observations of the jury foreman, as reported in the *Washington Post*, are worth pondering, because they indicate the rot in the medical system induced by the government's persecution of drug consumers. According to the *Post*, foreman Ralph Craft

did question one key premise of the government's case: that Hurwitz not only knew that some patients were selling the drugs he prescribed but that he orchestrated the operation. "No, he wasn't running a criminal enterprise," Craft said, adding that he felt that some of Hurwitz's patients played more important roles.

"He wasn't running a criminal enterprise." Keep in mind that Hurwitz was convicted in a *criminal* court. He faces life in prison. Yet the jury foreman does not believe the defendant engaged in criminal activity. Why, then, the conviction?

The *Post* article continued,

"The dosages were just astounding," foreman Ralph Craft said of testimony that Hurwitz prescribed 1,600 [opioid] pills a day to one patient and that his dosages caused the deaths of several patients and seriously injured others.

"I'm not an expert, but I do know that under the Hippocratic oath, the first duty of a doctor is do no harm, and it seemed a lot of Dr. Hurwitz's patients were harmed much more than they were helped. . . . He ramped up and ramped up the prescriptions very quickly. This is stuff that can kill people. He should have been extra careful.

"I'm not an expert." That's what the juror said, yet he was called on to judge whether Dr. Hurwitz treated his patients properly. What's wrong with this picture?

A travesty of justice

Actual experts were appalled by the verdict. On the letterhead of the Association of American Physicians and Surgeons (AAPS), an organization that advocates a free market in medicine, eight past presidents of the American Pain Society expressed their concern that "serious misrepresentations in the testimony provided by the government's expert, Dr. Michael Ashburn, will undermine the welfare of patients who suffer in chronic pain." Among other things, the government's witness asserted that high doses of opioids, such as OxyContin, indicated abuse of the drugs by pain patients not stricken with cancer. To this, the physicians responded,

It is factually untrue that this is a consensus opinion of pain experts. We strongly hold the view that patients with non-cancer pain may benefit from opioid therapy and that the dose necessary to control

pain may be high. Use of “high dose” opioid therapy for chronic pain is clearly in the scope of medicine.

The doctors rebutted four other specific claims made by the government’s witness. They concluded,

We are stunned by his testimony. As leaders in this field, we feel compelled to correct the errors in his testimony, lest it be used in the future in a manner that worsens the national tragedy of untreated pain.

(The letter can be viewed at www.aapsonline.org/painman/hurwitzletter.htm.)

A drug-war reign of terror

As syndicated columnist Jacob Sullum wrote,

Hurwitz was not the only person on trial at the federal courthouse in Alexandria. So was every doctor who has the courage to risk investigation by treating people who suffer from severe chronic pain with the high doses of opioids they need to make their lives livable.

The Hurwitz case is only the latest travesty. (The Pain Relief Network keeps track of the cases at www.painreliefnetwork.org.) And of course the convictions are noticed by other doctors, who either stop treating chronic pain altogether or undertreat it in order to avoid the government’s talons.

Let’s pause to reflect: our all-wise and all-benevolent government has brought about a situation in which people with long-term pain have little choice but to suffer because their doctors live under a reign of terror.

When was the last time you heard your compassionate president, senator, or representative mention that?

The answer is never. In fact, what you hear are new commitments to redouble the so-called war on drugs, which is really a war on drug makers and consumers — including chronic-pain sufferers.

It was inevitable that drug prohibition would seriously affect the practice of medicine, all assurances to the contrary notwithstanding. And you thought prohibition would merely deprive junkies of their fixes. So goes the Law of Unintended Consequences.

The head of the DEA, Karen Tandy, says there is no reason why good doctors should be hampered by its efforts. She pledges that her

goal is to ensure that patients with legitimate need have access to pain medications that relieve suffering and improve quality of life.... Doctors acting in good faith and in accordance with established medical norms should remain confident in their ability to prescribe appropriate pain medications.

But, as Sullum points out, that is no assurance at all. The DEA decides — after the fact — what “legitimate need” means, whether “established medical norms” are followed, and whether the prescriptions are “appropriate.” When you go to the doctor, a prohibition agent is looking over his shoulder. That should scare us all.

What could possibly be worth this cost? The prohibitionists will say that opioids are addictive. But Dr. Jane Orient, AAPS executive director, writes,

Today, there is considerable evidence that patients rarely, if ever, become junkies because of using opioids for pain relief — even though they are as dependent on the drugs as heart patients may be on their heart medicine.... The drugs have been literally lifesaving in countless patients who might otherwise have administered a gunshot wound to their head or suffered a fatal one-car accident.

A free market in health care

It's time for logic. Contradictions cannot exist. Proper and innovative medical care, which requires freedom and free markets, cannot coexist with government control, which includes professional licensing, prescription requirements, and drug bans. When the government decides who is and who is not a doctor, what is and what is not medicine, and what is and what is not a proper dose, medicine shifts from the private to the political realm. Society becomes what Thomas Szasz has dubbed a “pharmacocracy.” As he wrote in *Ceremonial Chemistry* (revised 1985),

Inasmuch as we have words to describe medicine as a healing art, but have none to describe it as a method of social control or political rule, we must first give it a name. I propose we call it *pharmacocracy*, from the Greek roots *pharmakon*, for “medicine” or “drug,” and *kratein*, for “to rule” or “to control.”

The war on drug users and doctors is the product of a totalitarian mentality. People should be able to buy whatever drugs they want, subject only to the principles of self-responsibility and liability. Doctors, competing in the free market, should be able to give their best advice to patients

without fear of being second-guessed by prohibition agents. Until then, the government is indistinguishable from our enemy.

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