

IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC04-2219

RUSH LIMBAUGH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF BY THE
ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS
IN SUPPORT OF PETITIONER RUSH LIMBAUGH

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Pursuant to Florida Rule of Appellate Procedure 9.370, the Association of American Physicians and Surgeons, Inc. (the “Association”), by and through counsel, requests leave to file the accompanying brief *amicus curiae* in support of Petitioner Rush Limbaugh.¹

The Association is a nationwide not-for-profit organization organized under the laws of Indiana. It is a non-profit membership organization of thousands of physicians dedicated to insuring the highest ethical standards in the practice of medicine and expressing the views of private physicians in policy matters. Among its members are physicians who practice in Florida. They and the Association are deeply concerned by the intrusion of law enforcement into medical judgment and medical care of patients, including those whose pain is best controlled by opioid medications and other controlled substances. The Association has an immediate interest in the privacy of physician-patient communications, and brings the viewpoint of its members before this Court in the accompanying brief.

The issue before this Court is whether Sections “395.3025(4) and 456.057(5)(a) bar the State from obtaining a search warrant to seize and inspect a patient’s medical records without providing the patient notice and a prior hearing to oppose the seizure and inspection.” Petitioner Limbaugh, the subject of a criminal

¹ The refusal of the State to consent to the timely filing of this brief has necessitated this motion. The voice of physicians in this dispute over medical records is worth considering. Petitioner has consented to the Association’s filing of an amicus brief.

investigation based on allegations that he is a “doctor shopper,” was deprived of his rights under those Sections. His medical records were taken without notice by the State. The prosecution sought to determine whether he violated provisions of 46 Fla. Stat. § 893.13(7)(a)(8) and (9), which criminalizes the failure of a patient to tell his doctor that he is obtaining pain medication from another doctor. To further its investigation, the State obtained search warrants under the “probable cause” standard and seized the entirety of Petitioner’s records from several Florida physicians. Despite constitutional and procedural rights of Petitioner, the trial and appellate courts refused to halt review of these medical records taken by law enforcement.

Quality medical care relies heavily on frank and confidential communications between patients and their physicians. The Association is deeply aware of the high costs of losing physician-patient confidentiality and patient privacy that the seizure of medical records represent here. *Amicus* respectfully requests leave to participate in order to inform this Court of the importance of these issues to medical care in Florida.

Far more is at stake than the furtherance of this routine drug investigation. At issue is whether medical care can be provided with a comparable level of trust as the attorney-client and priest-penitent relationships. This case will also exacerbate the pervasive undertreatment of pain, as physicians fear prosecutions of themselves or their patients for prescribing painkillers. The consequence is that many Florida physicians flatly refuse to prescribe opioids such as oxycodone and morphine for pain

even though clearly indicated. This climate of fear distorts the physician-patient relationship and medical decision-making. Even medical ethics is compromised.

The unwelcome disclosures of patient-physician communications can directly affect the patient's ability to be employed, insured, elected to political office or appointed to the bench. Patients suffering from chronic pain can be stigmatized as addicts based on information contained in their medical records. If the State has a legitimate need to access one's personal medical records, then it will have no trouble prevailing at a contested hearing with prior notice to the affected patient. Patients have a right to assert their objections before losing their privacy.

Amicus requests leave to file a brief in support of Appellant to provide information that will be directly useful to the Court in its consideration of the certified question on appeal. The full consideration and protection of individual rights at stake in this action requires taking the arguments in the accompanying brief into account.

WHEREFORE, *Amicus* requests the granting of this motion for leave to file its brief *amicus curiae*.

Dated: January 26, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 27, 2005, the foregoing was sent via overnight delivery to **James L. Martz, Esq.**, Assistant State Attorney, 15th Judicial Circuit of Florida, 401 N. Dixie Highway, West Palm Beach, FL 33401-4209; **Roy Black, Esq.**, Black, Srebnick, Kornspan & Stumpf, 201 S. Biscayne Boulevard, Suite 1300, Miami, FL 33131-4311; and **Robert C. Buschel, Esq.**, Buschel, Carter, Schwartzreich & Yates, P.A., 1225 S.E. 2nd Avenue, Fort Lauderdale, FL 33316-1807.

By: _____
Andrew Schlafly, Esq.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

By: _____
Andrew Schlafly, Esq.