Dr. Kale vs. the Drug Warriors - Oxycontin Is Not the Problem, He Says. ‘The DEA Is the Problem.’

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See also: The War on Drugs, War on Doctors, and the Pain Crisis in America; DeLuca; 2002

FORT SMITH – This is Dr. Robert Kale discussing the drug problem in America:

“The drug problem has gotten worse since the inception of the DEA [federal Drug Enforcement Administration]. The pressure they put on caused an increase in price. When that happened, a whole bunch of entrepreneurs got in the business, just like Prohibition. Drugs hadn’t been rampant in the schools before the DEA. In the ’60s, amphetamines were widely available, but they weren’t used recreationally. They were used to lose weight. Truck drivers used them to stay awake. [So did college students cramming for tests.]

“Congress told the DEA, ‘You’re not making a difference.’ The DEA needed something it could be effective on. So about 2001 or 2002, they designated Oxycontin as the number-one drug problem in the country.” Oxycontin is a pain-relieving drug, one of a group known as “opioids,” that is prescribed by doctors. “Look in the paper at the drug arrests. You’ll see methamphetamine, marijuana, cocaine and heroin arrests. And a lot of those are just from random stops on the highway. There’s no telling the amount of illegal drugs that never get caught. Much less often do you see arrests involving prescription drugs, and when you do, it’s usually in combination with nonprescription drugs.

“Meth is the big problem, not Oxycontin. But the DEA likes to go after doctors, not the people making meth. Doctors are in air-conditioned offices, and they don’t carry guns. That’s a lot better than going out in tick-infested woods looking for somebody who may be armed and hostile. Also, doctors are easily intimidated. So DEA, being the cowards and scum that they are, goes after doctors instead.”

In the end, it turns out there’s an even bigger drug problem than meth. “The DEA is the problem. The DEA is out to prevent legitimate patients from getting legitimate prescriptions from legitimate physicians.”

The DEA has certainly been a problem for Kale, a Fort Smith pain management physician who’s no longer practicing. A couple of years ago, after the state Medical
Board had suspended his license, thus denying him the right to prescribe drugs in Arkansas, and the DEA took away his DEA registration, thus denying him the right to prescribe controlled drugs anywhere. Even when the Medical Board found him innocent of drug violations and restored his license, the lack of a DEA registration effectively kept him out of business. “A pain management doctor can’t open a practice and not prescribe pain medicine.” Last month, the DEA returned his registration, having held it for 22 months after the Medical Board had reinstated him. He can (Voluble on most subjects, Kale is rather tight-lipped, and vague, when asked how he’s been getting by without his medical practice. “We’ve been selling a lot of things,” he said, and “I have a small disability.” Perhaps he had a lot saved up, although he said that he only saw 15 patients a day — believing he couldn’t do justice to more — and therefore made less than $50,000 a year. “What doctor does that?”)

Kale’s opinion of the Medical Board, and especially its chairman, Dr. W. Ray Jouett of Little Rock, is similar to his opinion of the DEA. He said that like most doctors these days, the doctors on the Medical Board work for insurers, since it’s insurers who pay for treatment. “I’m one of the last few doctors in this world that believes I work for the patient,” he said. The Medical Board is hostile to pain management physicians, he said, because pain management physicians diagnose chronic pain in their patients and prescribe long-term treatment. Insurance companies don’t want to hear about long-term treatment, much less pay for it, Kale said.

Kale is 53, intense and outspoken. He’s from Ohio and got his medical degree at Ohio State University, after which he served six years in the Navy. He’s an anesthesiologist trained in pain management, he said, and he was recruited to this area to start an anesthesia program at Crawford Hospital in Van Buren. He worked as an operating room anesthesiologist until he had to leave the o.r. because of back trouble. In 1995, he opened a pain management office. His practice included acupuncture, which he’d studied and which he says is effective on certain kinds of pain.

Some doctors are skeptical of their patients’ complaints, and are encouraged in their skepticism by the insurance companies, Kale said.

“A pain management doctor has to believe the patient when he says he’s in pain. Otherwise, I can’t be any good to him. I trust my patients. The patient has to keep records, he has to keep track of the pills he gets. He can’t do that if he’s abusing drugs.”

In 2002, the Medical Board charged Dr. Kale with over-prescribing controlled substances and suspended his license. Then, according to the doctor, a DEA agent persuaded him to surrender his DEA registration, through trickery, not mentioning that he had a right to a hearing nor saying anything about possible DEA charges against him. He says he was told over a year later that he had given up his registration “in lieu of DEA charges and prosecutions.”

Kale said the complaint that brought him before the Medical Board came from Dillard’s, the department store chain headquartered in Little Rock.
“Dillard’s wrote a complaint on me on a worker’s comp patient. They sent a nurse to tell me they didn’t want her [the patient] to get this expensive medication anymore. Her life was much better with the medication, but it was costing $1,000 a month.” The Dillard’s nurse said he was overdosing and told his nurse that if he didn’t stop, he’d be in trouble with the Medical Board, he said. “Two weeks later, the Medical Board issued a subpoena.”

The Medical Board eventually dropped the over-prescription charge, but found Kale guilty of violating a board regulation that requires pain management programs to offer interdisciplinary services, such as psychiatric and occupational therapy. A circuit court upheld the board’s finding. Kale is appealing to a higher court. The board restored his license unconditionally and allowed him to apply for reinstatement of his DEA registration. He did apply, but the DEA took no action on the application for 22 months, he said, other than asking him to sign agreements that would have been virtual admissions of guilt. Kale said the DEA claimed it had evidence that Kale patients had diverted drugs — that is, sold to others drugs that had been prescribed for themselves. Kale said there was no diversion.

In the meantime, Kale was demanding investigations of DEA agents he felt had abused him, including the one he said tricked him into giving up his DEA registration, Chris Anderson. Because of these demands, and his refusal to sign agreements the DEA asked him to sign, the agency had a vendetta against him, he said, and that’s why it held his registration so long after the Medical Board had cleared him of all drug charges. Also, the DEA needs to justify its existence, and doctors are easy prey, he said.

Kale’s patients sprang to his defense, as much as their pain allowed, in his confrontation with the Medical Board. Among them were 15 nuns, the sisters of St. Scholastica Monastery in Fort Smith, who wrote: “We experience Dr. Kale as a compassionate physician who is available to relieve those in pain. … Dr. Kale is a credit to the medical profession and the Fort Smith area. … He has even come to the Monastery on Sundays to treat our Sisters.”

Another correspondent, who addressed her letter to “Roy Juett,” was more belligerent: “I understand that you’re a doctor of some sort but from what I hear and read you don’t deserve that address in front of your name so I’m going to call you Roy. … I only hope and pray that one day you will suffer from chronic pain and there will be no Pain Management Doctors left to help you. I hope you can sleep at night knowing all the pain and suffering hundreds of people are going through because of you.”

The Medical Board’s files include one letter from a former Kale patient who was less than complimentary: “At one time he had me taking 60 ml. of oxycontin daily … I was sleeping my life away and when I weaned myself down I went 48 hours without urinating and I went to the emergency room for help and ended up locked up in a de-tox ward. … After that horrible day, ‘Dr.’ Kale didn’t want to see me anymore …”
That the Medical Board cleared him of any drug charges is a great tribute, considering that the board is biased against pain management physicians, Kale said.

“Jouett has made his life [performing surgery] on people with back pains. He’s the medical director for Tyson Foods. He’ll tell you that none of his patients have pain except the people who are trying to get out of work. Pain management physicians came along in the ’90s. The AMA [American Medical Association] was saying that pain is undertreated in this country, and that meds can be used long-term. Before, a person in chronic pain just wasn’t treated. Pain management physicians began to testify that 40 to 60 percent of people who have back surgery have pain afterward. They can function only if you treat the pain. Suddenly, we’re a threat to doctors like Jouett.”

The Times sought comment from Jouett. He did not return phone calls. A Medical Board employee suggested that a reporter talk to William H. Trice III, the board’s attorney, rather than Jouett.

(The Medical Board never yields information easily. Dr. Sidney Wolfe, director of the health research group of Public Citizen, the consumer advocacy group headquartered in Washington, once wrote: “Arkansas’ medical board seems bound and determined to shield doctors from adequate public scrutiny. Patients have to mail requests to the board or go to its office in Little Rock to get any information on their doctors’ histories. That’s an unnecessary burden, and it is likely that most patients are unaware if their doctors have been disciplined.” The procedure Wolfe described is still in effect. A reporter had to make an appointment several days in advance in order to look at the medical board’s file on Kale.)

Trice was asked if the board had a policy on pain management physicians. “It depends on what you mean by a policy. The board has regulations. Some patients need temporary pain treatment. If you’re going to treat pain for longer than six months, you have to monitor the treatment and comply with certain other requirements. Some patients choose to abuse the medication. Sometimes a patient’s pain is relieved, but the treatment is such that the patient is no longer functional. That does no good.”

Getting his license and his DEA registration back is not enough for Dr. Kale. He wants the Medical Board to resign. He’s also filed a suit against the board in federal court for its alleged mistreatment of him. He wants a hearing before the DEA on his complaints against DEA agents, and he’s filed a federal suit against Chris Anderson, the DEA agent he alleges misled him into surrendering his DEA registration. A DEA spokesman in Little Rock said that because of that lawsuit, the DEA would have no comment on Kale and his allegations.

“My father was a railroad worker with an eighth-grade education,” Kale said. “For his son to become a doctor was the American dream. I’ll fight to keep my reputation.”

His business is relieving pain, but he hopes to inflict some too.

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