

11-01: Doctor Shopping Statute

Case: Knipp v. State, 35 FLW D2898a

Date: December 22, 2010

Subject: "Doctor Shopping" statute is violated when a patient seeks a prescription and then fails to inform the doctor that he or she has already obtained a prescription for the same or similar controlled substance within the last 30 days, EVEN IF the doctor did not specifically ask the patient whether they had done so

FACTS: The defendant, Jeremy Knipp, obtained a prescription from a physician, and within thirty days of obtaining the first prescription, obtained another prescription for the same controlled substance from a different physician without informing the second doctor of the first visit. There was no proof that the defendant affirmatively misled the physician, or that the physician ever asked Knipp if he had received a prescription from another doctor. The defendant was arrested under Florida's "withholding information from a medical practitioner" law, 893.13(7)(a)8, Florida Statutes. The charge included an allegation that the defendant specifically requested the controlled substance from the doctor, and failed to inform the doctor of the prior prescription. The defense moved to dismiss the charge, arguing that the defendant did not affirmatively lie to the doctor, and also arguing that the statute in question does not impose an affirmative duty on a patient to disclose prior prescriptions if the doctor does not ask about them. The trial court held that there was no requirement that a patient first be asked about prior prescriptions in order to have violated the "doctor shopping" statute, and denied the motion. The defendant was convicted, and this appeal ensued.

RULING: The Fourth District Court of Appeal agreed with the trial court and upheld the conviction.

DISCUSSION: The court explained that the plain language of the statute required a person who seeks or requests a controlled substance to inform the physician if the person has already obtained a prescription for the same or similar substance within the last 30 days, and that the statute did not qualify this duty by requiring an affirmative request for the information by the doctor. Since the defendant did not contest that portion of charge which alleged that he actually requested the prescription, the plain language of the statute was satisfied, and the conviction was proper.

COMMENTS: Note that according to the holding in this case, it is necessary for the state to prove that the defendant actively sought or requested a prescription for the same or similar controlled substance in order for the "affirmative duty to disclose" to apply. Investigators should keep this element in mind when conducting investigations of this nature.

Also of interest is the fact that the defendant was also charged with trafficking in this case, because the quantity of controlled substance he received with the second prescription exceeded the trafficking threshold for that drug, and the state alleged that he received the drugs illegally because of the "doctor shopping" violation. Both the trial and appellate courts rejected this position, however, holding that since the defendant did in fact possess a valid prescription for the drug obtained from a licensed physician in the normal course of business, the "valid prescription defense" contained in 499.03, Florida Statutes was applicable. "Doctor shopping" charge upheld, trafficking charge dismissed.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.