

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE P. NAUM III,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

RONALD W. CHAPMAN II
CHAPMAN LAW GROUP
Counsel of Record for Petitioner-Appellant
1441 W. Long Lake Rd., Ste. 310
Troy, Michigan 48098
(248) 644-6326

QUESTION PRESENTED FOR REVIEW

Justice Potter Stewart's concerns raised at oral argument in *United States v. Moore*, 423 U.S. 122 (1975) over 40 years ago have become a reality.

And is it not true that historically most, if not all of the great breakthroughs and advances in medical science are made by people who did not follow the conventional way of doing things. They followed a new way, their way, and most of the conventional physicians of their day would have disagreed with them because this is not the way it has always been done . . . it bothers me that this kind of evidence . . . is the basis for criminal liability. This man was a physician, he was not a fraud.

United States v. Moore, 423 U.S. 122 (1975); Oral Argument in *United States v. Moore*, Oyez, <https://www.oyez.org/cases/1975/74-759> (last visited Jan 27, 2021).

As a result of what this Court has declared as ambiguous language in 21 U.S.C. §841 and 21 C.F.R. §1306.04, physicians in the United States are being convicted for professional disagreements and violations of the “standard of care” when prescribing opioids. *United States v. Moore*, 423 U.S. 122, 135; 96 S. Ct. 335, 345 (1975). The Circuits are widely split on their interpretation of 21 U.S.C. §841 and 21 C.F.R. §1306.04 and it is time for this Court to revisit *United States v. Moore*.

Petitioner-Appellant, George P. Naum III was convicted of violations of 21 U.S.C. §841(a)(1) and 21 U.S.C. §846 for prescribing Suboxone, a drug used to treat opioid use disorder. The central issue at trial was his use of nurses to expand the availability of patient care consistent with SAMHSA regulations. At trial, the trial court held that the elements of 21 U.S.C. §841(a)(1) as applied to a physician can be applied in the disjunctive thereby permitting the Government to proceed on a theory that prescriptions were issued either “beyond the bounds of professional practice” or

“for other than a legitimate medical purpose.” This permitted the Government to prosecute and convict Dr. Naum solely for violating professional standards. Further, the trial court prohibited expert testimony regarding the medical legitimacy of the prescriptions and hospital programs that operated in the same manner as Defendant.

The question presented is: Can the elements of 21 U.S.C. §841(a)(1) as defined in *United States v. Moore*, 423 U.S. 122 (1975) requiring the Government to prove unlawful distribution of a controlled substance “outside the usual course of professional practice” and “for other than a legitimate medical purpose” be applied in the disjunctive permitting the Government to prove only that a prescription was prescribed “outside the usual course of professional practice” or “outside the bounds of professional practice” solely for violation of a professional standard without regard to the medical legitimacy of the medication?

LIST OF PARTIES

All parties to the proceeding are identified in the style of the case.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner-Appellant, George P. Naum III discloses the following. There is no parent or publicly held company owning 10% or more of Petitioner-Appellant's stock.

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