

In The  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

App. No. 17-50408

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

vs.

MASOUD BAMDAD,  
Defendant-Appellant.

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On Appeal from the United States District Court  
for the Central District of California-Western Division

No. 08-cr-0506-GW  
The Honorable George H. Wu

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Appellant's Opening Brief

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**QUESTIONS PRESENTED FOR REVIEW**

1. Whether the district judge abused his discretion, where a physician who was practicing pain management based on the guidelines of his licensing agency, was convicted for distribution of only 51.5 grams oxycodone, but the judge based his sentence on a speculative 4,818 grams which was not convicted or indicted for?

2. Whether the district court also abused its discretion, when the U.S. Sentencing Commission, announced a two point reduction of offense level for all drug related criminal defendants, except very limited categories, and the district judge denied to grant this Defendant, this two points reduction based on Sentencing Amendment 782?

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

**1. Parties**

The Plaintiff in the district court, and the Appellee in this Court, is the United States of America. The Defendant in the district court, and the Appellant in this Court, is Dr. Masoud Bamdad ("Bamdad").

**2. Ruling Under Review**

This is an appeal of a final order November 22, 2017 by the Honorable George H. Wu (See Case No. 08-0506-GW, Dkt. 515), denying Appellant Bamdad Motion for modifying his harsh sentence under a retroactive Amendment by the United States Sentencing Commission, Amendment 782, and the new evolution in criminal law by the U.S. Supreme Court's decisions after Bamdad's original sentence (See Case No. 08-cr-0506-GW, Dkt. 511, filed on November 1, 2017). The district court, in order to deny Bamdad's motion, applied an erroneous legal standard, and its ruling is unpublished.

**3. Related Cases**

After being a diligent litigant, and filing a few meritorious habeas relief motions in the district court with no success, and likewise with their appeals to this Court. Bamdad then chose to apply for modification of his sentence pursuant to retroactive Sentencing Guideline Amendment 782 (drug minus 2), and other recent changes in the criminal law. At this time, there is no other related pending case in this Court.

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**JURISDICTION**

This Court's jurisdiction is invoked under 28 U.S.C. §1291, and 18 U.S.C. §3582(c)(2).

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## I. STATEMENT OF THE CASE

On October 29, 2008, Appellant Bamdad, a former practicing medical doctor from the Los Angeles area, was indicted for distributing controlled substances. A portion of Bamdad's practice was pain management with controlled substances, and was based upon Guidelines of the Medical Board of California, his licensing agency at the time of his practice. A copy of the mentioned guidelines is attached herein as Appendix A.

The above guidelines dictate that even children and addicts, when in pain, should not be thwarted from appropriate treatment with opioids, though out of caution, Bamdad never treated children in pain, or known addicts.

In the First Superseding Indictment ("FSI"), Bamdad was charged with 25 Counts of distribution of controlled substances, specifically oxycodone, and one Count of forfeiture. See Appendix B. Count 19 of the FSI charged Bamdad with distributing controlled substances resulting in the death of one of his patients (A.C.) Though there were two other deceased individuals in the FSI (Count 1, D.L., and Count 17, L.G.), Bamdad was not charged directly causing their deaths. Nevertheless, the first 19 Counts of the FSI, charged Bamdad under 21 U.S.C. §841(b)(1)(C). Most likely, the Government planned if it obtained conviction on Counts 1 and 17, to later request an enhancement of Bamdad's sentence at the time of sentencing.

After swaying the grand jurors emotions against Bamdad, by providing incomplete and untrue information regarding the three deceased patients, Bamdad was indicted. Then, at the beginning of the trial, the Government by its own motion, dismissed Count 1 (D.L.). Appellant

Bamdad has never been aware of the cause of D.L.'s death. It could have been a heart attack, any other natural cause, or even a car accident, and not Bamdad's prescription of a legitimate quantity of painkillers for his chronic pain given 15 days before his death.

Count 17 (L.G.), had consumed a mixture of licit and illicit drugs such as barbiturates, marijuana, crystal methamphetamine, cocaine, and alcohol, along with 50 pills of oxycodone that Bamdad had prescribed to his girlfriend. As a result, he overdosed and died with "polymedication," as reported by the coroner and toxicologist. None of the above substances were given to, or prescribed to him by Appellant Bamdad.

Count 19 (A.C.), Bamdad's patient with chronic back and knee pain as a result of previous vehicular and sports injuries. Three days before his death visited Bamdad and was prescribed 90 pills of 30 milligram oxycodone. Pressured by his own family, he took almost all 90 pills, a whole month supply, in less than a day. He then, unbeknownst to Bamdad, was transferred to a rehabilitation center instead of an E.R. As the evidence illuminates, there, he passed the overdose stage, and was recovering well. Rehab workers then gave him sleep and relaxation medication for withdrawal symptoms. The next morning he was found unresponsive in his private room. That specific rehab had a history of having controlled substances smuggled in, resulting in multiple casualties at the time of A.C.'s death. His family later sued the rehab, and reached a settlement. The coroner and toxicologist reported A.C.'s cause of death as "polymedication."

It is prudent to say that during his medical practice, Bamdad never overprescribed any medication, as even the FSI illustrates,

60-90 pills per month, or 2-3 pills per day, a normal dosage of medication for controlling pain, and not feeding a habit of drug addicts. It should also be reiterated that providing inaccurate and misleading information about the three deaths and Bamdad's practice, certainly had a negative effect on the minds and hearts of the grand jurors, facilitating Bamdad's indictment.

Without the prejudicial effects of the three deceased patients, Bamdad's case boiled down to a case of a licensed physician who tried to help his patients in pain by providing them a legitimate quantity of medication, therefore there was a great chance that the grand jurors would have refused to indict him.

Bamdad's trial became more of a morose attempt to frame him as a killer, spending nearly half of the trial time on A.C.'s death, and related emotional testimonies. This resulted in swaying the trial jurors's emotions, such as Jury No.5 who began to cry.

Bamdad was then convicted for a total of 51.5 grams oxycodone on all 13 Counts of conviction. Out of this amount, 36 grams pertained to the DEA undercover agents, who during their investigation/frame-up of Bamdad, violated his constitutional rights under the 4th (illegal search and seizure), and 5th (self-incrimination) Amendments. The agents intruded into Bamdad's private clinic examination rooms as fake patients. While consulting with Bamdad, they audio-video recorded their eight visits with concealed equipment, not having the required warrants or Bamdad's permission to do so, as well as failing to reveal their true identity(s) as law enforcement agents.

Bamdad's trial hinged on two pieces of evidence: (1) Incomplete and inaccurate evidence of A.C.'s overdose death; and (2) out-of-context, prejudicial and edited excerpts of those inadmissible recordings

from the fishing expedition of the undercover DEA agents. Bamdad's lawyer never objected or moved to suppress the inadmissible evidence before or during the trial.

On July 29, 2010, Judge Wu sentenced Bamdad to 25 years (300 months) imprisonment, \$1,000,000.00 criminal fine, and forfeiture of a small medical-dental office, which Bamdad shared with his wife, a dentist, and was owned by a California LLC and family trust, not Bamdad personally, despite Bamdad's objections, both verbally and written. Later, the Government recovered about \$250,000.00 from Bamdad's wife, in order not to sell her practice in a government's auction.

The above sentence was not based upon the jury's verdict for distribution of only 51.5 grams oxycodone, because the jury was hung on the death Counts (17 & 19), and after the trial and obtaining their prejudicial effects on both the grand and petit jury(s), the Government moved to dismiss those two Counts. The advisory U.S. Sentencing Guidelines recommends an offense level of 26 for this amount, with a range of incarceration of 63-78 months. Bamdad's sentence was based on unsubstantiated findings by the judge, DEA agents, and prosecutors, that by a preponderance of the evidence, They based Bamdad's sentence on an unsubstantiated amount of 4,818 grams of oxycodone, which is not asserted in the FSI, or the amount the jury convicted him of. They also considered three deaths to enhance Bamdad's sentence. Bizarrely, one of the three deaths was alive and testified against Bamdad and in the favor of the Government during the trial. Before the sentencing, Bamdad objected to his presentence report ("PSR"), it was never corrected. For the past few years, through

the prison authorities, Bamdad has been trying to raise the issue and requested a correction of the PSR as well. Unfortunately, the probation office has yet to respond to Bamdad's pleas. Thus, Bamdad was sentenced based on an untrue PSR, in addition to considering the three deaths, which one of them was/is alive, and the other two L.G., and A.C., who died with "polymedication," which one of them (L.G.), received the causating substances from other sources not Bamdad. The other one (A.C.), not only took Bamdad's prescribed medication against its direction, he consumed multiple other medications, which were administered to him by others, and in fact was under the care of a rehab center at the time of his death, and also passed away as a result of "polymedication." See Appendix C, Bamdad's and the prison official's correspondances with the probation office. A copy also submitted to the district court attached to the petition for modifying the sentence, which is generally the subject of this instant appeal.

Therefore, Bamdad remains in prison based on untrue information, and the deaths, which he was not "but-for" cause of. See Burrage v. United States, 134 S.Ct. 881 (2014). Nevertheless, this appeal is related to a retroactive 782 Amendment by the sentencing commission, which was announced in 2014 by them, and lawfully applies to Bamdad's case, and at least could cut from Bamdad's sentence a minimum of five years. Yet the district court erroneously, intentionally, or unintentionally twisted the facts, and turned Bamdad's pleas to regard crack cocaine law, which does not apply to Bamdad, and was not his intention when he filed his motion for modification of sentence.

The Government in its opposition to Bamdad's motion for modification of sentence asserted the issues that were never proven to the jury or that Bamdad knowingly or intentionally committed them. Therefore, it is prudent to refer to them here. The Government claimed that Bamdad's offense level started at level 41. This is true, but as stated before, it was an erroneous number and calculation to begin with, and Bamdad's appellate lawyer was ineffective by not raising it during direct appeal. It is without question that Bamdad was convicted by the jury for distribution of only 51.5 grams oxycontin/oxycodone in all 13 Counts of conviction. Out of this amount, 36 grams pertained to eight Counts of conviction for prescribing Oxycontin to the DEA undercover agents, who violated Bamdad's privacy rights and right not to self-incriminate, were unconstitutional and without the required warrants and/or Bamdad's consent after revealing their true identities, intruded into Bamdad's private clinic examination rooms and secretly recorded his conversations in both audio and video with concealed equipment. They then in their affidavit of arrest lied that they consensually recorded Bamdad, among other lies. See Appendix D. While by California law, any kind of consensual agreement, should be agreed on at least by two opposite parties. In fact, recently a court in the State of Washington threw out a big conspiracy prostitution ring case, due to the fact that the law enforcement agents did record some members of the ring without consent and the required warrants. The California law is similar to Washington State. See Appendix E.

During their unconstitutional investigation, the undercover DEA agents not only violated Bamdad's rights under the 4th and 5th Amendments of the U.S. Constitution, and his statutory interception rights, which were misconstrued by Bamdad's trial court, they also plainly violated



Bamdad's privacy rights and right not to self-incriminate under California Constitution. See Cal. Const. art. I, §§1 &15. And as stated in the previous paragraph, they violated Bamdad's rights under California interception law.

Bamdad's trial and appellate lawyers were ineffective to raise the above important matters in a timely manner, before or during the trial, or on direct appeal. Yet Bamdad properly raised them in his §2255 motion for habeas relief. The district court misconstrued them, and also left other jurisdictional claims unaddressed, as of today. This Court thus far, has also refused to hear them by declining to issue a COA.

Adding insult to injury, during Bamdad's sentencing the Government and the sentencing court miscalculated his offense level, based on erroneous information presented to that court under an unsubstantiated distribution of 4,818 grams oxycodone, which Bamdad was not indicted for, nor found guilty "without a reasonable doubt," by the jury. Bamdad's offense level calculated at an erroneous 41, for the above reason, as well as his criminal history calculated at II. Bamdad himself objected to those before and at the time of his sentencing, when he noticed no one, including his retained lawyer did not object to the inaccurate formulations. Yet his plea was rejected by the sentencing court against the obvious wrongfulness of the calculation. The Government has also tried to mislead and distract this Court, even now at this stage, and kept asserting that Bamdad's offense level started at 41, without going into detail about the issue of how it was calculated at 41 in the first place, by adding ghost drugs on top of whatever amount that the jury convicted him of. It does not admit that Bamdad was convicted of distributing only 51.5 grams oxycodone.

by the jury, and then the prosecutors and DEA agents, with the help of the probation office, jacked up the quantity of the medication, and fabricated an offense level of 41. While in contrast, the advisory guidelines specifies an offense level of 26 for distribution of 51.5 grams oxycodone.

Bamdad's criminal category II was also erroneously specified by the Government and the sentencing court despite Bamdad's objections. It was calculated based on an inaccurate report by the probation office. Bamdad had an old expunged state misdemeanor conviction, as a result of a family dispute. Based on the sentencing guidelines, that expunged conviction should not have been counted into the formulation. See U.S.S.G. §4A1.2(j) and its commentary. A copy of the expunged court document is attached to Appendix C, recent attempts to correct the PSR, as an exhibit for judicial notice.

Accordingly, Bamdad's offense level of 41, and criminal category of II are completely false, and based on inaccurate information provided by the Government and the probation office to the sentencing court, to begin with. In order to convict a doctor who was authorized by the law to prescribe the subject medication to his patients, the Government should have charged him for all suspect prescriptions, and sought to have a jury conviction on that amount. Otherwise, that 4,818 grams, which astonishingly including even the dismissed counts or acquitted counts, was a vicious attempt by the Government to retaliate against Bamdad, because he tried to challenge his wrongful and unconstitutional conviction. That 4,818 grams prescribed was nothing but normal activity by a physician during the course of his practice, particularly when he was never accused of distributing that amount. See, e.g., United States v. Chube II, 538 F.3d 693 (7th Cir. 2008).

Moreover, under the Sixth Amendment right to a jury, and the Supreme Court's decisions from In re Winship, 397 U.S. 358, 364 (1970), to Apprendi v. New Jersey, 530 U.S. 466, 500 (2000), and Blakely v. Washington, 542 U.S. 296 (2004), and most recently the issue was clearly explained by the Court in Alleyene v. United States, 133 S.Ct 2151 (2013)(the Sixth Amendment requires any element and facts which increases the penalty for a crime must be submitted to the jury and find without a reasonable doubt).

Additionally, Bamdad was not a street drug dealer, he was a physician who was practicing pain management by the standard and recommendation of his licensing agency, he should not have been held responsible for an amount of drugs he was never convicted on, similar to a street drug dealer who are held responsible for ghost drugs. As stated previously, Bamdad was always following his licensing agency guidelines for treating pain with controlled substances. For instance, about a year before Bamdad's arrest, the mother of his 19 years old patients who visited Bamdad for his chronic pain as a result of previous injuries, and was prescribed a legitimate dosage of oxycontin, without notifying Bamdad, filed a complaint against Bamdad with the Medical Board of California, because she thought her son was an addict. The board after an investigation, concluded that Bamdad did not violate any law or regulation. See Appendix F.

Before his arrest, Bamdad did not know that his licensing agency requirements are different than that of the federal Government and DEA. As a matter-of-fact, by the 2000s, when Bamdad was practicing, the nation was demanding pain treatment, such that Congress declared a "Decade of pain Control and Research." Pub. L. No. 106-386 (Oct. 28,

2000)(designating the calendar decade beginning January 1, 2001, as the Decade of pain control and Research). Physicians thus came to appreciate that, more than merely an unpleasant side effect of injury or disease that should be endured, pain is a significant cause of other morbidity(s). See Amer. Acad. of Family Physicians, Pain Management and Opiate Abuse: A Public Health Concern (Aug. 2, 2012).

The issue of the proper standard of care instruction for prescription cases such as this Appellant, is thus an important issue, where courts allow the Government to secure convictions. In some instances, such as Bamdad, harsh consequences for him and his family, based only on evidence amounting to, at most, medical practice negligence. When this occurs, it has a chilling effect on the dwindling number of legitimately practicing physicians who are willing to treat chronic pain patients. Cris Barrish, Crackdown on Painkiller Epidemic Hurts Legitimate Patients, USA Today, Feb. 27, 2012. Doctors become concerned about the media coverage of prescription drug abuse and the tough enforcement actions undertaken against treating physicians. Id. Also, when doctors are stripped of their licenses or worse, there are collateral consequences to legitimate patients, who then have a difficult time obtaining proper treatment. Id. Of course or perhaps, there are always some patients who lie in order to obtain narcotics or abuse drugs, even if they have a legitimate medical condition. And this issue sometimes becomes a puzzle for even seasoned physicians, who are dealing with legitimate pain issues, because pain is a subjective matter. Often times a doctor has only his patients' word on whether they are in pain, and the level and frequency of that pain.

See also "When treating pain brings a criminal indictment,"  
by Criminal Defense and Civil-Liberties Litigator Harvey Silvergate,  
the Wall Street Journal, June 13-14, 2015. The author asserted that  
"the line between legitimate and illegitimate prescription—as  
drawn by the Drug Enforcement Administration (DEA) and the Justice  
Department—is far from clear. This puts physicians in great legal  
jeopardy, and too often leaves their patients to suffer needless  
agony."

Besides the above, Appellant Bamdad, during the past year, has  
discovered new material dealing with how pharmaceutical companies, and  
particularly Purdue, makers of Oxycontin deceived the FDA and primary  
care physicians, in order to sell more of its narcotics. For example,  
Purdue Pharma representatives deceived this Appellant to believe their  
medicine was not habit forming, because of its slow release and how  
it worked with the body's natural circadian rhythms and endorphins.  
It releases little by little in the blood, and is the best product  
for chronic moderate to severe pain. Bamdad didn't know that the coating  
of the medication (the slow releasing portion), is easily removable  
with a little heat, alcohol, or even saliva, until he entered prison,  
and heard from other inmates, who had abused this drug. Never having  
been an addict of any sort, or closely associated with addicts, Bamdad  
was unaware of how easily Oxycontin was to abuse. A few months ago,  
Bamdad was reading New Scientist Magazine of May 13-19, 2017. On  
page 25, he noticed an article by Chelsea Whyte. The author wrote  
how Purdue Pharma, provided inaccurate and false information to  
physicians, allowing the company to make over 31 billion dollars  
within the first 20 years of selling its addictive drug.

And in 2007, while Purdue representatives were consistently coming to Bamdad's office before his arrest to market their medications, at this same time, the company was settling a \$600,000,000.00 litigation with the federal Government for misbranding and mislabelling their product. Purdue representatives never informed Bamdad regarding misbranding oxycontin. They were always talking about safety and the effectiveness of their medication. They never told Bamdad that there was the possibility of overdose deaths with their medication, because removing its coating was that simple, and people after that can inject or snort their medicine. Otherwise, Bamdad would have ceased prescribing oxycontin, which has been the source of injury and death nationwide, as has been discovered and revealed over the past few years while Bamdad has been incarcerated. Bamdad wishes he knew all of this for two reasons: (1) He would have not been contributing to this because he would of stopped listening to the inaccurate information of Purdue's representatives; and (2) he would not have been a contributor to the suffering of Americans, including his wife and children, as a result of his confinement.

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## II. DISPARITY OF SENTENCE

Before wrapping up the facts of Bamdad's case, he would like to bring to the attention of this Court that his sentence in no way is comparable or in line with any other doctor or similarly situated individual, at least in the confines of this Circuit. There is also still a big puzzle left for Bamdad. How is it that those of a similar offense a similar group of individuals, specifically physicians could be prosecuted by two different authorities, state and federal. And in the end receive completely different types of punishments with a

huge disparity in length between state and federal sentences, during the same time frame. The followings are the physicians who were prosecuted by the state authorities and were sentenced by the state courts: 1) Paul Maynard (convicted on Feb. 15, 2007, and received seven months incarceration); 2) Nicolas Sasson (from Salina California, convicted on 10/18/2004, received five years probation and \$1,000 fine); 3) Peter Ahles (convicted on 10/5/2006, and received six months home detention and three years probation); 4) Peter Dietrich (Sacramento, California, convicted on 11/19/2009, received 60 days suspended sentence in jail, 4 years probation, 600 hours community service, and \$800 fine); 5) Joan Keteschbach (Elk Grove, California, one day jail, three years probation, 120 hours community service, and 18,204.11 restitution fee); and 6) more recently, Dr. Carlos Estandian from the Los Angeles area, in a jury trial was convicted on 13 counts of distribution of controlled substances, and one count of causing the death of one of his patients. With the same number of counts of conviction as Bamdad, except Bamdad was not convicted of causing his patients' deaths. Dr. Estandian received five years imprisonment, and only ended up serving two and a half years in a state prison.

The next group of doctors, who were prosecuted and sentenced by the federal authorities are: 1) Dr. HeaLY No. 09-cr-163-MR (C.D. Cal.) (before Judge Manny Real pleaded guilty, and received four years imprisonment and \$150,000 fine). Dr. Healy in one year bought about 1,200,000 pills of Hydrocodone, and passing them to his middle men to sell those pills in batches of 500-1000 pills. He was also prescribing an unlimited quantity of oxycodone/oxycotin to his patients, and distributing different size bottles from one pint to one gallon promethazine with codeine syrup to his clients, and asking them if



they needed individual or party sized; 2) Dr. Bassam Yassine, No. 07-cr-778-PSG (C.D. Cal.)(after pleading guilty, he received 37 months imprisonment and \$6500 fine). Dr. Yassine had a flat rate of \$180.00 for his visits, though he usually did not visit his clients. They were just coming to the office, when he was not there, pay \$180 to the secretary, and he/she had pre-written prescriptions for 180 pills of hydrocodone (gram to gram is 10% less potent than oxycodone) from the doctor, and handed them to the clients. Dr. Yassine was also writing prescriptions for other controlled substances including oxycodone; 3) Dr. Odegaard, No. 06-cr-178-DAE (D. Haw.)(convicted at trial by a jury to multiple counts of prescribing controlled substances. He was also accused of the deaths of his patients. Before the jury deliberation, the judge dismissed the death counts. He received five years imprisonment and \$12,500 fine); 5) Dr. Davis No. 00-1132-MMM (C.D. Cal.)(He was ordering any type and quantity of controlled substances by phone without visiting patients. He received 40 months imprisonment, which was reversed on direct appeal through representation of a court appointed lawyer; 6) Dr. Braun (C.D. Cal., convicted on 3/5/2007, and received 70 months imprisonment and \$17,500 fine). He was writing prescriptions for 500 pills of oxycodone/oxycotin under names of nonexistent people. His associates were filling the prescriptions and returning the pills to doctor. Then, Dr. Braun would use some of the pills and sell the rest in the market; 6) Dr. Kaplan, 895 F.2d 618 (9th Cir. 1990)(D. Nev.)(five years unsupervised probation). He was writing painkillers for some clients, in exchange those clients were providing him with marijuana, when marijuana use was tollay prohibited); 7) Dr. Vu Le (C.D. Cal.) (pled guilty and on 11/17/2009 received 57 months imprisonment and \$1500



fine/assessment fee). He had that much cash and drugs in his house that in his room he was keeping a loaded firearm; 8) Dr. Kummerle No. 10-cr-417-DMG (C.D. Cal.), the most interesting case in this series. In the same Courthouse with this Appellant, and with the same prosecutor, AUSA Christensen, but a different judge, was sentenced at the same time frame that Bamdad was sentenced. He was only sentenced to two months pre-trial detention after pleading guilty, even though was accused of more serious charges than Bamdad's. He had a co-conspirator, who together distributing numerous controlled substances including Oxycontin, Aderall, Hydrocodone, and other chemicals together. He was known as the second largest distributor of oxycontin in the nation by the DEA official reports; 9) Dr. Joel Stanley Dreyer, No. 08-cr-0041 (C.D. Cal.)( After pleading guilty to distribution of controlled substances, particularly oxycodone/oxycontin he received about 9 years imprisonment). Dr. Dreyer had his prescription pads in parking lots, parties, and spas, and was writing as many pills as his friends and clients requested. Two of his patients also overdosed and died, but he was never accused or held responsible for those deaths. He was writing controlled substances for known addicts, and the ones who were residing in rehabilitation centers. His case reversed on direct appeal with the assumption that he had multiple microinfarct in an MRI of his brain without obvious disability; and 10) Dr. Wesley Albert, a psychiatrist who did not have a professional office. He was residing in a hotel/casino. He had boxes of prescriptions pads. His clients who visited him by going to the casino room, and he would write them prescriptions without medical records or any documents. One of his patients/clients was found dead of an overdose in his house. Next to his body, they found 20 empty bottles of controlled substances, which were all prescribed recently

by Dr. Albert. The Government decided not to prosecute him, most likely, because he did not have any assets to be seized.

Since Bamdad has been incarcerated, he has also come across some other interesting cases, which though are not regarding the prosecution of physicians, but other notorious cases, and how those Defendants had been treated by the federal Government and courts. For instance, in a case of extensive international conspiracy for distributing MDMA (Ecstasy), multiple Defendants were arrested either in the United States or abroad. One of them was Tamer Ibrahim, one of the ring leaders who was arrested in the Netherlands. Because they were buying Ecstasy pills from there, and through multiple channels and countries, were importing them into the U.S. with the help of customs agents. They were supplying large swaths of the United States, and particularly Southern California. Tamer Ibrahim pled guilty and received 15 years, later having it reduced to 10 years. His co-leader went to a jury trial and lost, received 25 years, later his sentenced reduced to 15 years, and after about 11 years he was released from prison. Ecstasy is known as a rape drug and has resulted in numerous overdose deaths as well.

Bamdad recently met another interesting defendant in USP-Marion, Illinois. His name is Victor Bout, he is a Russian, and infamous international arms dealer, who was providing arms to African and Afghan rebels using cargo planes. He was arrested abroad, and after a jury trial, received a 25 year sentence, the same as Appellant Bamdad. Bamdad is certain that with the arms that he distributed thousands of innocents were killed, even Americans outside of this country. How this could happen in a nation, which is known for democracy and the rule of law, a practicing doctor, who had made some bad decisions,

was fooled by false and inaccurate propaganda and advertisement of the pharmaceutical companies, the same way that they fooled the FDA to market their medication, and also believed in his patients, when they told him they were in pain and certain medication helps them, should have received such an unusual and harsh punishment compared to dangerous criminals.

This disparity in Bamdad's sentence is the crux of this constant battle with the courts. If he had been given a sentence more in line with other physicians, he would have taken his lumps, did his time and then went to pasture. If the Court could explain why such an over-the-top sentence was given, Bamdad could try to set things right with the courts. As things stand, a near life sentence leaves him no recourse but to fight like a wild dog. Bamdad is as tired of fighting as the courts are of dealing with his constant briefs, motions, pleadings, etc... What does Bamdad have to do to make things right? What is it that he has done that makes those allegations against him so much more egregious than those physicians mentioned above or the real and dangerous criminals who made hundreds of millions of dollars through their crimes? What has Bamdad done to earn a sentence amongst the most evil of our society?

On the top of all the above, Appellant Bamdad still believes that he had never violated any interstate commerce law, and committed any federal offense. His license to practice medicine, his office, and all his patients were Californians. He was not accused or charged of any insurance fraud or mail fraud, and during his medical practice he did not cross any state line or utilize internet or even interstate phone calls. His indictment does not illustrate any interstate violation as well.

### III. DISCUSSION

#### A. LEGAL STANDARD:

##### a. Amendment 782

On April 30, 2014, pursuant to 28 U.S.C. §994(p), the sentencing commission promulgated Amendment 782, or drug crimes minus two. The commission generally revised the Drug Quantity Table and Chemical Quantity Table across drug and chemical types. The Sentencing Commission consistent with its authority, stated that the Amendment would become effective on November 1, 2014. In addition, on July 18, 2014, the Sentencing Commission subsequently voted, pursuant to the authority provided in 28 U.S.C. §994(u), to make Amendment 782 retroactively applicable to previously sentenced defendants. It was held that on or after November 1, 2014, previously sentenced defendants may move under 18 U.S.C. §3582(c)(2) for modification of their sentences on the basis of Amendment 782.

It further bears noting that, in its action declaring Amendment 782 retroactively applicable, the Sentencing Commission specified: "the court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later." See U.S.S.G. §1B1.10(e)(1), Amendment 782 (July 18, 2014). Accordingly, beginning on November 1, 2014, district courts may address applications for reduced sentences. Since November 2014, even certain district courts without any application from the defendants, they, with their own motion, identified the qualified defendants, and automatically reduced the defendants sentences and sent them their new release dates. Bamdad was waiting for almost three years for such a motion from his sentencing court.

**b. 18 U.S.C. §3582(c)(2)**

This subsection of 18 U.S.C. §3582, provides that a court may modify a term of imprisonment once it has been imposed in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §994, upon motion of the defendant or the Director of Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in §3553(a) to the extent that they are applicable policy statement issued by the Sentencing Commission.

**c. U.S.S.G. §1B1.10(b)(1)**

This subsection of U.S.S.G., §1B1.10 provides the determination of reduction in term of imprisonment. Generally, in determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. §3582(c)(2) and this policy statement is warranted, the court shall determine the amendment guideline range that would have been applicable to the defendant if the amendment to the guideline listed in subsection (c) had been in effect at the time the defendant was sentenced.

**d. 18 U.S.C. §3553(a)**

Moreover, at the time of resentencing, the court should reconsider and set forth this section factors, and imposes the new sentence appropriately in light of these factors, and also should consider the sentence it would have imposed had the Amendment 782 been in effect at the time of the defendant sentencing. Though, the court need not to articulate precisely each and every factor of §3553(a), as long as the record exhibits that the pertinent factors were taken into account.

**e. Recent Evolution in the Criminal Law, Which Could Apply to Bamdad at Resentencing or Consider them Under Factors Set Forth Pursuant to 18 U.S.C. §3553(a).**

In the past few years since Bamdad's original sentence, the Supreme Court has recognized certain rights in favor of the criminal defendants. Some of the ones, which might apply to Bamdad's case, and a resentencing court would be able to consider them are as follows:

1. Southern Union Co. v. United States, 567 U.S. \_\_\_\_, 132 S.Ct. 2344(2012). In this watershed case of Rule of Apprendi, the Supreme Court observed that any substantial criminal fine should be decided by a jury as a Sixth Amendment right, not a judge.

2. Alleyne v. United States, 570 U.S. \_\_\_\_, 133 S.Ct. 2151 (2013). In this case, the Court overruled Harris v. United States, 536 U.S. 545 (2002), and emphasized on Rule of Apprendi v. New Jersey, 530 U.S. 466 (2000). The Supreme Court held that "[A]ny fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond reasonable doubt." This applies to any facts that increases the mandatory minimum and/or mandatory maximum of a sentence, Because those facts are "elements" that must be submitted to the jury.

3. Burrage v. United States, 571 U.S. \_\_\_\_, 134 S.Ct. 881 (2014). The Supreme Court quoted both Apprendi and Alleyne during its 9-0 decision. In this substantive retroactive new law, the Court interpreted the application of (b)(1)(C) provision of 21 U.S.C. §841, for penalties. The Court observed that to accuse, charge, and sentence a defendant under this section and increase his punishment for someone's injury and/or death, the defendant should be the only "but-for" cause of that death or injury.

**B. APPELLANT BAMDAD IS QUALIFIED FOR SENTENCE REDUCTION UNDER AMENDMENT 782 (DRUG MINUS 2), A TWO POINT REDUCTION OF HIS OFFENSE LEVEL, IN ADDITION TO APPLYING OTHER NEW EVOLUTIONS OF THE CRIMINAL LAW BY THE SUPREME COURT FOR RESENTENCING.**

Bamdad was sentenced in 2010, a while before the two point reduction decision for drug offenders by the U.S. Sentencing Commission, which was later held to be retroactive, and Congress did not oppose it. The Commission excluded certain drug offenders from this Amendment, such as the ones who were initially sentenced under minimum mandatory of advisory guidelines, and also career offenders. Bamdad is in neither of the above two categories, and in fact he was sentenced way above the guidelines, and what the jury convicted him of, as described earlier in the section of "STATEMENT OF THE CASE." Therefore, he qualified to obtain the benefit of the 782 Amendment to the Sentencing Guidelines. As stated before, Bamdad was awaiting the sentencing court with its own motion to reduce Bamdad's sentence pursuant to the new Amendment. After not hearing from the sentencing court, on or about October 23, 2017, Bamdad submitted a motion to the district court for this purpose. See Case 08-cr-0506-GW, Dkt. 511.

Unfortunately, the district/sentencing court intentionally or unintentionally misconstrued Bamdad's motion, and even gave a hint to the prosecutors to oppose Bamdad's action with an unrelated subject, crack cocaine. This was never an accusation or conviction for Bamdad. See case No. 08-0506-GW, Dkt. 512. In a chamber order by Judge Wu "The Court orders the Government to respond to Defendant Masoud Bamdad's MOTION for Retroactive Application of Sentencing Guidelines to Crack Cocaine Offense..." Subsequently, after Bamdad noticed this intentional or unintentional mistake from the lower court,



he submitted another motion, Dkt. 513, and requested correction of clerical or court mistakes in its order, and the criminal docket sheet. In that motion, Bamdad re-emphasized that his case is regarding prescribing medically approved controlled substances, specifically oxycontin by a licensed physician, not distributing Crack Cocaine by a street drug dealer.

As stated previously, Bamdad was convicted of distribution of only 51.5 grams oxycodone on all 13 counts of conviction. The suggested offense level by advisory guidelines for this amount after an unsubstantial conversion of 1 to 6700 grams of oxycodone to marijuana will be level 26 (oxycodone has an unsubstantial conversion rate from any other licit and illicit drugs for unknown reasons. For instance, another medically approved controlled substance with chemical similarity to oxycodone is hydrocodone, which is gram to gram 10% less potent than oxycodone. The sentencing guidelines considers conversion of it to marijuana 1 to 500 grams. almost 1/13 of the conversion of oxycodone).

The district court, on its order for denial of correction of Bamdad's sentence and applying a two point reduction, asserted that at the time of original sentencing, considered only one count of 13 counts of conviction for the sentencing purposes, and then ran the other counts of conviction concurrently. This is adding insult to injury. If this Court only considers one count of conviction, the highest quantity of the drug that Bamdad was convicted by the jury, were counts 2, 4, 5, 6, 7, 8, 9, 10, and 11 (this Court must notice that counts 4-8, and 10-11, pertain to the unconstitutional activities of DEA undercover agents)(emphasis added). If we calculated any of the aforementioned counts, each were for 60 pills of 80 milligrams oxycontin, with a total quantity of 4800



or 4.8 grams oxycodone in all 60 pills in toto. If this Court considers this amount only, then Bamdad's offense level is based on unsubstantiated conversion of oxycodone to marijuana (1 to 6700), the total amount of marijuana for 60 pills of oxycontin will be only 32160 grams of marijuana or a little over 32 kilograms.

For distribution of 20 to 40 kilograms marijuana, the advisory guidelines suggests offense level 18. With offense level 18 and a criminal category of I, a defendants should be sentenced to 27-33 months incarceration. If this Court considers criminal history of II for Bamdad based on the inaccurate PSR, because it considered an old expunged misdemeanor conviction to reach category II, then the guidelines suggests imprisonment of 30-37 months. If this Court considers all 51.5 grams oxycodone of conviction on all counts of conviction based upon the guidelines, Bamdad's imprisonment time should be 63-78 months with criminal history category I, and 70-87 months for criminal history category II. Therefore, Bamdad's sentence from the beginning was not based on the rule of law, and advisory guidelines, it was based on assumption and speculation by the probation officer and the Government, which unfortunately was accepted as true by the sentencing court.

Interestingly, after the probation officer asserted in its prepared PSR that the sentencing court had discretion to even sentence Bamdad to probation only, he simultaneously submitted a separate letter to the sentencing court, and asserted that in order to punish Bamdad and give a lesson to the medical community, the court should sentence him to 25 years, a lump sum, not based on clearly established law. Bamdad was then sentenced based on that letter by the district court, not

based on whatever amount that the jury convicted him. The district court on page one of its denial order of November 21, 2017, on its footnote mentioned that Bamdad's 268 prescriptions were bad, and they were "outside the scope of professional medical practice," and "without legitimate medical purpose." The Supreme Court in Gonzalez v. Oregon, 546 U.S. 243 (2006), concluded that the above two terminologies are vague and ambiguous, and in need of further discussion. Therefore, the Government charges physicians and asserts that their activities were based on these two ambiguous terminologies, and the courts, such as Appellant Bamdad's trial and sentencing court, accepts and secures convictions for the Government based on what has been known as ambiguous by the Supreme Court.

On the same footnote, the district court asserted that those 268 prescriptions were examined by the Government's expert. The Government's expert, Dr. Chavez, as his own website illuminates he has/had been addicted himself to prescription drugs. Either the Government paid him well to conclude Bamdad's prescriptions were bad, or he was under pressure by the Government for his own prosecution for prescribing himself controlled substances. Furthermore, based on Apprendi and its progeny until Alleyene, "any fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond reasonable doubt." This was obviously not done in Bamdad's case, since its inception. The district court in order to keep the Government happy, has abused its discretion and turned a blind eye to the rule of law, and the Supreme Court precedents. The Supreme Court never observed that after a trial, if the Government feels that it did not obtain enough convictions, it is free to hire a paid expert who under threat and duress to conclude

whatever the Government desires, and sentence a poor defendant, particularly a 64 year old physician to life in prison, for writing a legitimate quantity of painkillers in a legitimate time span for his patients, who either they were really in pain, or feigned suffering in pain, in order to obtain painkillers for abuse. Bamdad reiterates here that pain is a subjective matter, which a patient feels and tells to a physician, as even the addicted government expert contended himself during the trial.

Amazingly, the probation officer in his prepared inaccurate PSR, asserted that based on evidence, Bamdad does not have any personal assets, so no criminal fine and/or restitution was stated in the PSR. Yet the sentencing court without any objection from Bamdad's sentencing lawyer, announced a one million dollar unsubstantiated fine at the end of sentencing. The sentencing lawyer was at least honest, and during Bamdad's habeas proceedings, admitted his ineffectiveness by preparing a sworn affidavit, which Bamdad presented as an exhibit in his §2255 motion. He himself admitted he did not know what he had to do, but the district court concluded that his performance was sufficient, probably in favor of the Government. Interestingly, before and during the sentencing, this certain lawyer did not object to even one part of Bamdad's sentence. Bamdad's appellate lawyer was also ineffective and failed to raise any of the above issues on direct appeal. This was most likely the reason that this Court affirmed Bamdad's conviction and sentence on direct appeal.

The district court on the same footnote also asserted that homeless people were coming in groups to Bamdad's office to obtain prescriptions for dangerous medication. First of all, the Government had not been able to prove such accusations by the DEA agents, and

was unable to introduce any such scheme, except Count 2 of the indictment, T.N., who came to Bamdad's office with his friend, and during the trial, under duress of being prosecuted himself, he testified that he had been a crystal meth addict, and after losing his apartment, he began sleeping in his car for a certain amount of time. Bamdad never knew about this and he never asked his patients if they were homeless or not. These type of questions are offensive and no doctor is allowed to ask them. Secondly, the Government, through AUSA Lisa Feldman, despite providing the reporters of the media such as the Los Angeles Times, inaccurate and false information, which was published on May 1, 2008, admitted that based on the DEA agents, there was a scheme to bring homeless people to Bamdad's office; to pose as patients, but there is no evidence that Bamdad knew about such a scheme. Bamdad believes the above statement by the prosecutor, speaks volumes, contrary to what the district court perceived and wrote in its denial order.

Bamdad understands that a majority of the above discussion is not necessary for a motion for sentence modification under §3582(c)(2), yet because the Government's opposition and the district court's denial order, do not clearly explain the facts of Bamdad's conviction and sentence to this Court, he decided to expand more than necessary, with the hope that this Court will grasp the depth of injustice that was rendered. Bamdad has been imprisoned for approximately 10 years, for more than any formulation or calculation used to determine his sentence, and unfortunately, his appellate lawyer did not raise the above facts in a timely manner.

As the district court's order of November 2017, also reveals, it seems that the district court has been upset that Bamdad did not show remorse during his sentencing. First, Bamdad at the end of the proceeding, he read his prepared statement, and apologized to the trial court and showed his remorse. Second, he had to argue about his wrongful conviction, because his lawyer chose to be silent without any objection or argument. Bamdad had himself to bring to the attention of the court the errors of his conviction, and object to his PSR.

During the time that Bamdad was practicing medicine and pain management, the media had not yet started reporting causalities and addiction problems through the use of medically approved controlled substances, such as oxycontin, and that the pharmaceutical companies were attempting to mislead physicians, in order to sell their products. Bamdad was still in the dark.

For instance, on October 15, 2017, on the program 60 minutes, they interviewed a whistleblower, EX-DEA agent, Joe Rannazzissi, who ran the DEA's office of Diversion Control, and was deputy assistant administrator, holding law and pharmacy degrees, said that "drug distributors pumped opioids into U.S. communities—knowing that people were dying—and said industry lobbyist and Congress derailed the DEA's efforts to stop it." There was a systemic effort by big pharma to push as much of their opioid medication onto the market as possible, through any means possible, all under the protection of the U.S. Congress. Unfortunately, Bamdad found himself caught up in the middle of that erroneous path, through the prescribing of a safe product. Everyone was wrong. Bamdad had believed in the accuracy of the information provided to him by the pharmaceutical companies, and the FDA, which

approved their product for chronic moderate to severe pain. He was misinformed, and was unaware of how dangerous their product was even after his arrest and conviction.

Therefore, he never appreciated the deep negative impact his prescriptions might cause if used improperly. His show of remorse was not as full throated as it should have been, nor as deep as it is today. As great as Bamdad's remorse is about his past ignorance and the horrific affects that some of his prescriptions may have caused others, this doesn't excuse the Government from its deceptive practices which played its own part, along with Bamdad's mistakes of ignorance and love of the good life, that have put us where we are today. The proud Iranians fight to their last breathes when they believe they have been unfairly attacked. That goes for their families as well.

Another issue that the district court raised in its order, is about Bamdad's post-conviction rehabilitation. On his motion for modification of sentence, Bamdad asserted that he completed some training, like a one year college course for microsoft systems, which provided him 30 units toward a bachler degree, as well as other courses. He also volunteered to teach GED courses to inmates. The district court apparently did not accept Bamdad's assertion because it was not accompanied with an affidavit. Bamdad's prison records illustrate all Bamdad's assertions, and Bamdad did not know that he had to file an affidavit with his claims. Thus, he will verify this Brief under oath, in order to fix that deficiency.

Bamdad is currently 64 years old. His family has remained with him after 10 years confinement, and they continued to suffer as he is.

He is a first time non-violent offender. He will not be able to practice medicine anymore, therefore, will not be able to hurt anyone, or no chance of recidivism. He is at the age of retirement, though he does not have any pension or retirement savings. He and his family need to be given a second chance to join together, and he be close to his children for the next 10-20 years, which will be his maximim life span.

Wherefore, he respectfully requests that this Court review his claims of his wrongful sentence, and that with an order to the lower court, or even to a new judge, to not only grant him a two point reduction based on proper formulation or calculation of his offense level and criminal history projecting the real amount of medication, which he was convicted of by the jury, not unsubstantiated amounts of drugs claimed by the Government and the judge. The new resentencing court should also consider the new evolutions in criminal law by the Supreme Court such as Alleyne, Burrage, and Southern Union Co. Therefore, they should not consider the two overdose deaths that Bamdad was not responsible and "but-for" cause of, based on Burrage. Also, to waive the one million dollar unreasonable and unsubstantiated criminal fine, based on Southern Union Co., as well as recalculate Bamdad's prison time, pursuant to Alleyne, and actual quantity of oxycodone, which Bamdad was convicted of. The resentencing court would be able to consider the above three cases under §3553(a) factors. Considering all the above, this Court will notice that Bamdad has already served almost double the time that he should have served based on jury deliberations.



#### IV. CONCLUSION

Accordingly, Appellant Bamdad respectfully requests that this Court, reverse and remand the district court's erroneous decision and favorably refer his case for resentencing to another district court. Bamdad also prays for any additional relief that the Court deems appropriate in these circumstances.

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#### V. VERIFICATION

Appellant Masoud Bamdad, makes a solemn affirmation that the statements in his foregoing Opening Brief, are made as his own personal firsthand actual knowledge, and are true, correct, complete, and not misleading in anyway whatsoever, under penalty of perjury under the law of the State of California, and the United States (28 U.S.C. §1746).

Appellant Bamdad also certifies under penalty of perjury that the submitted Appendices (A-F), are authenticated, true, and correct copies of the originals.

Respectfully submitted,



Masoud Bamdad | 47237-112  
Pro Se representation  
U.S. Penitentiary  
P.O. Box 1000  
Marion, IL 62959

Dated: March 22, 2018



CERTIFICATE OF COMPLIANCE

I, Masoud Bamdad hereby certify the foregoing opening brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because it contains approximately 7,000 words, excluding the parts of the brief exempted by the Rule.



Masoud Bamdad

CERTIFICATE OF SERVICE

I, Masoud Bamdad hereby certify that I have mailed a true copy of my OPENING BRIEF FOR APPEAL OF THE DISTRICT COURT'S ORDER OF NOVEMBER 21, 2017 (DKT. 515 of Case No. CR-08-506-GW) via first class USPS to:

AUSA Stephanie Christensen  
United States Attorney's Offices  
United States Courthouse  
312 N. Spring St.  
Los Angeles, CA 90012

Executed on this 22nd day of March 2018, in the County of Williamson, State of Illinois.



Masoud Bamdad

APPENDIX

A

WELCOME TO  
THE MEDICAL BOARD OF CALIFORNIA  
*Department of Consumer Affairs*

Home → Pain Guidelines

**Guidelines for Prescribing Controlled Substances for Pain**

Adopted Unanimously by the Board in 1994 and Recently Revised

*"No physician and surgeon shall be subject to disciplinary action by the Board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain."*

Business and Professions Code section 2241.5(c)

Preamble

In 1994, the Medical Board of California formally adopted a policy statement titled, "Prescribing Controlled Substances for Pain." The statement outlined the Board's proactive approach to improving appropriate prescribing for effective pain management in California, while preventing drug diversion and abuse. The policy statement was the product of a year of research, hearings and discussions. California physicians and surgeons are encouraged to consult the policy statement and these guidelines, which can be found at [www.mbc.ca.gov](http://www.mbc.ca.gov) or obtained from the Medical Board of California.

In May 2002, as a result of AB 487, a task force was established to review the 1994 Guidelines and to assist the Division of Medical Quality to "develop standards to assure the competent review in cases concerning the management, including, but not limited to, the under treatment, under medication, and over medication of a patient's pain." The task force expanded the scope of the Guidelines, from intractable pain patients to all patients with pain.

Inappropriate prescribing of controlled substances, including opioids, can lead to drug abuse or diversion and can also lead to ineffective management of pain, unnecessary suffering of patients, and increased health costs. The Medical Board recognizes that some physicians do not treat pain appropriately due to a lack of knowledge or concern about pain, and others may fail to treat pain properly due to fear of discipline by the Medical Board. These Guidelines are intended to improve effective pain management in California, by avoiding under treatment, over treatment, or other inappropriate treatment of a patient's pain and by clarifying the principles of professional practice that are endorsed by the Medical Board so that physicians have a higher level of comfort in using controlled substances, including opioids, in the treatment of pain. These Guidelines are intended to promote improved pain management for all forms of pain and for all patients in pain.

A High Priority

The Board strongly urges physicians and surgeons to view effective pain management as a high priority in all patients, including children, the elderly, and patients who are terminally ill. Pain should be assessed and treated promptly, effectively and for as long as pain persists. The medical management of pain should be based on up-to-date knowledge about pain, pain assessment and pain treatment. Pain treatment may involve the use of several medications and non-pharmacological treatment modalities, often in combination. For some types of pain, the use of medications is emphasized and should be pursued vigorously; for other types, the use of medications is better de-emphasized in favor of other therapeutic modalities. Physicians and surgeons should have sufficient knowledge or utilize consultations to make such judgments for their patients.

Medications, in particular opioid analgesics, are considered the cornerstone of treatment for pain associated with trauma, surgery, medical procedures, or cancer. A number of medical organizations have developed guidelines for acute and chronic pain management. Links to these references may be found on the Medical Board of California's Web site at [www.mbc.ca.gov](http://www.mbc.ca.gov).

The prescribing of opioid analgesics for patients with pain, may also be beneficial, especially when efforts to alleviate the pain with other modalities have been unsuccessful.

Intractable pain is defined by law in California as: "a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and surgeon and one or more physicians and surgeons specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain." (Section 2241.5(b) of the California Business and Professions Code)

Physicians and surgeons who prescribe opioids either for acute or persistent pain should not fear disciplinary or other action from California law enforcement or regulatory agencies for the mere fact of having prescribed opioids. The appropriate use of opioids in the treatment of intractable pain has long been recognized in California's Intractable Pain Treatment Act, which provides that "No physician and surgeon shall be subject to disciplinary action by the Medical Board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain." (Section 2241.5(c) of the California Business and Professions Code)

The Medical Board expects physicians and surgeons to follow the standard of care in managing pain patients.

## Guidelines

### → History/Physical Examination

A medical history and physical examination must be accomplished. This includes an assessment of the pain, physical and psychological function; a substance abuse history; history of prior pain treatment; an assessment of underlying or coexisting diseases or conditions; and documentation of the presence of a recognized medical indication for the use of a controlled substance.

- *Annotation One:* The prescribing of controlled substances for pain may require referral to one or more consulting physicians.
- *Annotation Two:* The complexity of the history and physical examination may vary based on the practice location. In the emergency department, the operating room, at night or on the weekends, the physician and surgeon may not always be able to verify the patient's history and past medical treatment. In continuing care situations for chronic pain management, the physician and surgeon should have a more extensive evaluation of the history, past treatment, diagnostic tests and physical exam.

### → Treatment Plan, Objectives

The treatment plan should state objectives by which the treatment plan can be evaluated, such as pain relief and/or improved physical and psychosocial function, and indicate if any further diagnostic evaluations or other treatments are planned. The physician and surgeon should tailor pharmacological therapy to the individual medical needs of each patient. Multiple treatment modalities and/or a rehabilitation program may be necessary if the pain is complex or is associated with physical and psychosocial impairment.

- *Annotation One:* Physicians and surgeons may use control of pain, increase in function, and improved quality of life as criteria to evaluate the treatment plan.
- *Annotation Two:* When the patient is requesting opioid medications for their pain and inconsistencies are identified in the history, presentation, behaviors or physical findings, physicians and surgeons who make a clinical decision to withhold opioid medications should document the basis for their decision.

### → Informed Consent

The physician and surgeon should discuss the risks and benefits of the use of controlled substances and other treatment modalities with the patient, caregiver or guardian.

- *Annotation:* A written consent or pain agreement for chronic use is not required but may make it easier for the physician and surgeon to document patient education, the treatment plan, and the informed consent. Patient, guardian, and caregiver attitudes about medicines may influence the patient's use of medications for relief from pain.

### → Periodic Review

The physician and surgeon should periodically review the course of pain treatment of the patient and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. If the patient's progress is unsatisfactory, the physician and surgeon should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

- *Annotation One:* Patients with pain who are managed with controlled substances should be seen monthly, quarterly, or semiannually as required by the standard of care.
- *Annotation Two:* Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, or improved quality of life. Information from family members or other caregivers should be considered in determining the patient's response to treatment.

### → Consultation

The physician and surgeon should consider referring the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Complex pain problems may require consultation with a pain medicine specialist.

In addition, physicians should give special attention to those pain patients who are at risk for misusing their medications including

those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse requires extra care, monitoring, documentation and consultation with addiction medicine specialists, and may entail the use of agreements between the provider and the patient that specify the rules for medication use and consequences for misuse.

→ *Annotation One:* Coordination of care in prescribing chronic analgesics is of paramount importance.

→ *Annotation Two:* In situations where there is dual diagnosis of opioid dependence and intractable pain, both of which are being treated with controlled substances, protections apply to physicians and surgeons who prescribe controlled substances for intractable pain provided the physician complies with the requirements of the general standard of care and California Business and Professions Code section 2241.5.

#### → Records

The physician and surgeon should keep accurate and complete records according to items above, including the medical history and physical examination, other evaluations and consultations, treatment plan objectives, informed consent, treatments, medications, rationale for changes in the treatment plan or medications, agreements with the patient, and periodic reviews of the treatment plan.

→ *Annotation One:* Documentation of the periodic reviews should be done at least annually or more frequently as warranted.

→ *Annotation Two:* Pain levels, levels of function, and quality of life should be documented. Medical documentation should include both subjective complaints of patient and caregiver, and objective findings by the physician.

#### → Compliance with Controlled Substances Laws and Regulations

To prescribe controlled substances, the physician and surgeon must be appropriately licensed in California, have a valid controlled substances registration and comply with federal and state regulations for issuing controlled substances prescriptions. Physicians and surgeons are referred to the Physicians Manual of the U.S. Drug Enforcement Administration and the Medical Board's Guidebook to Laws Governing the Practice of Medicine by Physicians and Surgeons for specific rules governing issuance of controlled substances prescriptions.

→ *Annotation One:* There is not a minimum or maximum number of medications which can be prescribed to the patient under either federal or California law.

→ *Annotation Two:* Physicians and surgeons who supervise Physician Assistants (PA's) or Nurse Practitioners (NP's) should carefully review the respective supervision requirements.

Additional information on PA supervision requirements is available at [www.physicianassistant.ca.gov](http://www.physicianassistant.ca.gov).

PA's are able to obtain their own DEA number to use when writing prescriptions for drug orders for controlled substances. Current law permits physician assistants to write and sign prescription drug orders when authorized to do so by their supervising physician for Schedule II-IV. Further, a PA may only administer, provide or transmit a drug order for Schedule II through Schedule V controlled substances with the advanced approval by a supervising physician for a specific patient.

To ensure that a PA's actions involving the prescribing, administration, or dispensing of drugs is in strict accordance with the directions of the physician, every time a PA administers or dispenses a drug or transmits a drug order, the physician supervisor must sign and date the patient's medical record or drug chart within seven days. (Section 1399.545(f) of the California Code of Regulations)

NP's are allowed to furnish Schedule III-V controlled substances under written protocols.

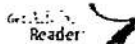
#### Postscript

While it is lawful under both federal and California law to prescribe controlled substances for the treatment of pain, there are limitations on the prescribing of controlled substances to or for patients for the treatment of chemical dependency (see Sections 11215-11222 of the California Health and Safety Code). The California Intractable Pain Treatment Act (CIPTA) does not apply to those persons being treated by the physician and surgeon only for chemical dependency because of use of drugs or controlled substances (Section 2241.5(d)). The CIPTA does not authorize a physician and surgeon to prescribe, dispense, or administer controlled substances to a person the practitioner knows to be using the prescribed drugs or controlled substances for non-therapeutic purposes (Section 2241.5(e)). At the same time, California law permits the prescribing, furnishing, or administering of controlled substances to or for a patient who is suffering from disease, ailments, injury, or infirmities attendant on old age, other than addiction (Section 11210 of the California Health and Safety Code) and the CIPTA does apply to "a practitioner who is prescribing controlled substances for intractable pain, and as long as that practitioner is not also treating the patient for chemical dependency."

The Medical Board emphasizes the above issues, both to ensure physicians and surgeons know that a patient in pain who is also chemically dependent should not be deprived of appropriate pain relief, and to recognize the special issues and difficulties associated with patients who suffer both from drug addiction and pain. The Medical Board expects that the acute pain from trauma or surgery will be

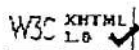
addressed regardless of the patient's current or prior history of substance abuse. This postscript should not be interpreted as a deterrent for appropriate treatment of pain.

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APPENDIX

B



APPENDIX B

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
June 2008 Grand Jury

UNITED STATES OF AMERICA,	)	CR No. 08-506(A)-GW
	)	
Plaintiff,	)	<u>F I R S T</u>
	)	<u>S U P E R S E D I N G</u>
v.	)	<u>I N D I C T M E N T</u>
	)	
MASOUD BAMDAD,	)	[21 U.S.C. §§ 841(a)(1),
	)	(b)(1)(C): Distribution and
Defendant.	)	Dispensing of a Controlled
	)	Substance; 21 U.S.C.
	)	§§ 841(a)(1), (b)(1)(C):
	)	Distribution and Dispensing of
	)	a Controlled Substance
	)	Resulting in Death; 21 U.S.C.
	)	§ 859: Distribution of a
	)	Controlled Substance to Persons
	)	Under Twenty-One Years of Age;
	)	21 U.S.C. § 853(a): Criminal
	)	Forfeiture of Property; 18
	)	U.S.C. § 2(b): Causing an Act
	)	to Be Done]

The Grand Jury charges:

COUNTS ONE through EIGHTEEN

[21 U.S.C. §§ 841(a)(1), (b)(1)(C); 18 U.S.C. § 2(b)]

On or about the following dates, in Los Angeles County,  
within the Central District of California, defendant MASOUD  
BAMDAD, then a physician licensed to practice medicine in the

1 State of California, while acting and intending to act outside  
 2 the usual course of professional practice and without a  
 3 legitimate medical purpose, knowingly and intentionally  
 4 distributed and dispensed, and caused the intentional  
 5 distribution and dispensing of, the following number of pills  
 6 containing a detectable amount of oxycodone, a Schedule II  
 7 narcotic drug controlled substance, to the following persons:

COUNT	DATE	NUMBER OF PILLS	PERSON
ONE	9-24-07	60	D.L.
TWO	9-25-07	60	T.N.
THREE	9-27-07	60	UC1
FOUR	10-25-07	60	UC1
FIVE	10-25-07	60	UC2
SIX	11-29-07	60	UC1
SEVEN	11-29-07	60	UC2
EIGHT	11-29-07	60	UC3
NINE	12-3-07	60	S.C.
TEN	1-9-08	60	UC1
ELEVEN	1-9-08	60	UC2
TWELVE	1-14-08	60	R.B.
THIRTEEN	2-1-08	90	L.N.
FOURTEEN	2-2-08	60	G.R.
FIFTEEN	2-14-08	60	C.M.
SIXTEEN	3-7-08	90	B.A.
SEVENTEEN	4-2-08	60	L.G.
EIGHTEEN	4-11-08	100	J.D.

COUNT NINETEEN

[21 U.S.C. §§ 841(a) (1), (b) (1) (C); 18 U.S.C. § 2(b)]

On or about April 9, 2008, in Los Angeles County, within the Central District of California, defendant MASOUD BAMDAD, then a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, approximately 60 pills, each containing a detectable amount of oxycodone, a Schedule II narcotic drug controlled substance, to A.C., whose death and serious bodily injury resulted from the use of such substance.

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## COUNTS TWENTY through TWENTY-FIVE

[21 U.S.C. §§ 841(a) (1), (b) (1) (C); 21 U.S.C. § 859;

18 U.S.C. § 2(b)]

On or about the following dates, in Los Angeles County, within the Central District of California, defendant MASOUD BAMDAD, then at least eighteen years of age and a physician licensed to practice medicine in the State of California, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of, the following number of pills containing a detectable amount of oxycodone, a Schedule II narcotic drug controlled substance, to the following persons who were then under twenty-one years of age:

COUNT	DATE	NUMBER OF PILLS	PERSON	AGE
TWENTY	5-16-07	60	J.P.	19
TWENTY-ONE	11-27-07	75	B.B.	19
TWENTY-TWO	1-9-08	60	W.C.	18
TWENTY-THREE	1-28-08	60	C.C.	18
TWENTY-FOUR	3-7-08	75	Y.A.	19
TWENTY-FIVE	4-2-08	60	M.B.	19

COUNT TWENTY-SIX

[21 U.S.C. § 853(a)]

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2  
3 1. The allegations contained in Counts One through Twenty-  
4 Five of this Indictment are hereby repeated, realleged and  
5 incorporated by reference herein as though fully set forth at  
6 length for the purpose of alleging criminal forfeiture pursuant  
7 to the provisions of Title 21, United States Code, Section 853.  
8 Pursuant to Rule 32.2, Fed. R. Crim. P., the United States will  
9 seek forfeiture as part of any sentence in accordance with Title  
10 21, United States Code, Section 853 in the event of defendant  
11 BAMDAD's conviction under Counts One through Twenty-Five of this  
12 Indictment. The interests of defendant BAMDAD that shall be  
13 subject to forfeiture include the following:

- 14 a. All right, title, and interest in --
- 15 i. any and all property constituting, or derived  
16 from, any proceeds obtained, directly or  
17 indirectly, as a result of any of the  
18 offenses described in Counts One through  
19 Twenty-Five; and
- 20 ii. any property, real or personal, used, or  
21 intended to be used, in any manner or part,  
22 to commit, or to facilitate the commission  
23 of, any of the offenses described in Counts  
24 One through Twenty-Five;
- 25 b. A sum of money equal to the total value of the  
26 property described in paragraph 1(a).  
27  
28



APPENDIX

C



APPENDIX C

**U.S. Department of Justice  
Federal Bureau of Prisons**

*United States Penitentiary*

Office of the Warden

4500 Prison Road  
P. O. Box 2000  
Marion, IL 62959

January 7, 2016

Michelle A. Carey, Chief USPO  
United States Probation Office  
United States Courthouse  
312 North Spring Street, 6th Floor  
Los Angeles, CA 90012-4701

Dear Chief Carey,

This correspondence is in regard to Masoud Bamdad, Register Number 47237-112, a federal inmate who is presently incarcerated at the United States Penitentiary, Marion, Illinois. Mr. Bamdad was sentenced on July 29, 2010, in the Central District of California, to 300 months for Distribution and Dispensing of a Controlled Substance, Causing an Act to Be Done, Distribution and Dispensing of a Controlled Substance to Persons Under Twenty-One Years of Age, Causing and Act to Be Done in case CR 08-506-GW.

Mr. Bamdad has indicated the Pre-sentence Report (PSR) contains inaccurate information. Pursuant to Sellers vs. Bureau of Prisons 959 F2d 307(D.C. Cir. 1992), Mr. Bamdad has provided details concerning the information he considers to be inaccurate (see enclosed documents).

Please review Mr. Bamdad's allegations of inaccuracy pertaining to his PSR and return to us your findings, in writing. If you are able to confirm the information in the PSR is inaccurate, we are also requesting an updated PSR.

Thank you for your assistance regarding this matter. If you have any questions, do not hesitate to contact me at (618) 964-1441, extension 1816.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Murphy", is written above the typed name.

E. Murphy  
Case Manager





U.S. Department of Justice  
Federal Bureau of Prisons

*United States Penitentiary*

Office of the Warden

4500 Prison Road  
P. O. Box 2000  
Marion, IL 62959

June 13, 2016

Michelle A. Carey, Chief USPO  
United States Probation Office  
United States Courthouse  
312 North Spring Street, 6th Floor  
Los Angeles, CA 90012-4701

Dear Chief Carey,

This correspondence is in regard to Masoud Bamdad, Register Number 47237-112, a federal inmate who is presently incarcerated at the United States Penitentiary, Marion, Illinois. Mr. Bamdad was sentenced on July 29, 2010, in the Central District of California, to 300 months for Distribution and Dispensing of a Controlled Substance, Causing an Act to Be Done, Distribution and Dispensing of a Controlled Substance to Persons Under Twenty-One Years of Age, Causing and Act to Be Done in case CR 08-506-GW.

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Please review Mr. Bamdad's allegations of inaccuracy pertaining to his PSR and return to us your findings, in writing. If you are able to confirm the information in the PSR is inaccurate, we are also requesting an updated PSR.

Thank you for your assistance regarding this matter. If you have any questions, do not hesitate to contact me at (618) 964-1441, extension 1814.

Sincerely,

E. Murphy  
Case Manager

MASOUD BAMDAD  
47237-112  
U.S. Penitentiary  
P.O. Box 1000  
Marion, IL 62959

January 6, 2016

Chief of  
United States Probation Office  
for the Central District of California  
United States Courthouse  
312 N. Spring St.  
Los Angeles, CA 90012

RE: United States v. Bamdad, Case No.: 08-cr-506-GW

Dear Sir/Ma'am,

There are numerous falsifications and discrepancies in my pre-sentence report ("PSR"), which were never corrected. These have been causing some problems and misunderstandings in Bureau of Prisons during my incarceration. They are as follows:

1. My PSR mentions that I caused the overdose deaths of the following individuals: 1) A.C. (Alex Clyburn); 2) L.G. (Lawrence (Larry) Gratton); and 3) J.D. (Jolie Delattrie). These are inaccurate for the following reasons: (a) Jolie Delattrie was alive during my trial, when I was in custody, and most probably she is still alive. She was in fact one of my patients that under duress of zealous prosecutors and the DEA agents testified at trial against me. See the attached appendix. How is it that I can be the cause of someone's death, who is still alive? This is absurd. Please fix this falsity in your prepared PSR at your earliest convenience; (b) Alex Clyburn died with numerous medications in his system, as the Coroner's office concluded his death a result of polymedication. The same applies to the overdose death of Larry Gratton, who died of a self-inflicted overdose of numerous illicit and licit drugs such as crystal meth, marijuana, cocaine, barbiturates, alcohol, and oxycodone. The only medication that was in the two above overdose deaths, and were prescribed by me, was oxycodone. In fact, in the case of Larry Gratton, I did not prescribe the oxycodone to him. I prescribed it to Jolie Delattrie, his girlfriend. She handed them to Larry, and it was a mixture of drugs that resulted in his overdose death, none of which were provided to him by me. The above two deaths were reported by the coroner as polymedication accidental overdoses.

Recently, the Supreme Court in Burrage v. United States, 134 S.Ct. 881 (2014), clearly explained (b)(1)(C) section of § 841. The high Court held in order for someone to be held responsible for somebody's death, he/she should be but-for cause of that death. This means that the action of that person should be the one and only

cause of that death, not one of numerous contributing factors, such as polymedication. The Court specifically observed that polymedication by itself is but-for cause. This decision is retroactive. Therefore, based on the above, I was not but-for cause of the self-inflicted accidental overdose deaths of either Alex Clyburn, or Larry Gratton. I was wrongfully accused, tried, and sentenced based on inaccurate information you provided. These deaths had a significant effects on my indictment and conviction to other counts by swaying the emotions of the grand and trial juries. Although, the present time, is not the time to argue about how I was convicted, but the incorrect information about these deaths in my PSR, has resulted in trouble for me during my incarceration. Please correct them as promptly as possible, either by removing them, or clarifying the manner and cause of their deaths, stating that I was not the sole cause of their deaths.

2. You reported in my PSR that I broke my wife's hands and nose. These are completely false, and such a thing has never happened. I was convicted wrongfully in state court for a misdemeanor simple battery on my wife and a police officer, which never happened as well. After having argument with my wife (normal spouses having an argument and yelling at our home). Someone notified the LAPD cops (1 well corrupted organization, that almost everyday, we read about their misconduct). The cops came to our apartment, and I asked them to leave my home. Afterward, they wrote a false report to cause me trouble. I said in court that I would sue police for falsification. That court for that reason, did not dismiss the case and convicted me wrongfully of simple battery. In 2004, that case was expunged. Therefore, it should not have been reflected in my PSR, because the instant case had happened 10 years prior to my instant conviction. In addition, that was also expunged. See again the attached appendix.

The presiding federal judge on my instant case, Judge Wu, utilized the inaccurate provided information in my sentencing. Although, there are numerous other issues in my PSR, such as the amount of oxycodone that you mentioned, and I was never convicted by jury to that amount. But the above two issues are very important, because they result in destroying my other endeavors, such as being released from this web of injustice that I have been entangled, as well as the commutation of sentence and clemency.

3. The amount of medication that I was convicted of by the jury is wrong in your report also. I was convicted of 51.5 grams of oxycodone in all 13 counts of conviction. Out of this amount, 36 grams pertain to prescribing oxycodone to the undercover DEA officers, who without establishing a probable cause and obtaining the required warrants or my consent, unconstitutionally in violation of the Fourth and Fifth Amendments, intruded into my private office examination rooms and clandestinely audio-video recorded my conversations. At the time of my trial, I was not aware of my constitutional rights, and my trial lawyer simply sold me to the DEA agents and prosecutors. My paid appellate lawyers cooperated with them, and did not raise the issue in a timely manner. Thus far, no competent court is willing to to hear my grievances and I am stuck in prison. Hopefully, very soon, somebody somewhere in this unjust system, is going to

fix this miscarriage of justice. Based on the above, for the alleged distribution of only 51.5 grams of oxycodone to my real patients (51.5-36 grams), as a physician who was authorized to prescribe oxycodone to his patients, based on your inaccurate PSR and recommendation in your attached letter to the PSR, I received 25 years imprisonment, \$1,000,000.00 criminal fine, and forfeiture of a small family owned medical/dental office, which is not even stated in my indictment in violation of the Constitution and Federal Rule of Criminal Procedure 7(c)(2). I know this was not your personal fault, and possibly was a conspiracy between the federal judge, prosecutors, and my own well paid defense lawyers, in order to cover-up the misdeeds of the wrongdoers. God bless them!

I would greatly appreciate it if you could promptly fix these mistakes in my PSR. This way, I might have an opportunity for relief through other avenues such as executive clemency. Additionally, this might allow me to have a better life and respect in a federal prison until a fair tribunal helps me obtain complete relief.

The above request is pursuant to Sellers v. Bureau of Prisons, 959 F.2d 307 (D.C. Cir. 1992), that I am providing you details about my case. If you need any further information, I would be happy to provide it.

Thank you in advance for your kind assistance.

Very truly yours,

Masoud Bamdad

enclosure....

cc: p/file

Doc. 165 Criminal Case 08-CR-506-BW

I N D E X

APRIL 27, 2009; VOLUME 5

CHRONOLOGICAL INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE	VOL
Jolie Delattrie	12	18	27			5
Albert Daher	28	31				5
Mark Nomady	35	68,81				5
Katherine Ellis	98	125	138	143		5
Michelle Bonds	149	160	175	176		5
Rick Chavez	178					5

ALPHABETICAL INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE	VOL
Bonds, Michelle	149	160	175	176		5
Chavez, Rick	178					5
Daher, Albert	28	31				5
DeLattrie, Jolie	12	18	27			5
Ellis, Katherine	98	125	138	143		5
Nomady, Mark	35	68,81				5

1 MR. KALOYANIDES: Your Honor, just to be clear, I  
2 have prior to the trial even beginning instructed anyone  
3 affiliated with the defense not to have contact with either  
4 witnesses or the jury. So I just want on the record that I  
5 have been making my instructions very well known.

6 THE COURT: Okay. That's fine.

7 MR. KALOYANIDES: Thank you.

8 *(The jurors entered the courtroom.)*

9 THE COURT: Good morning, ladies and gentlemen.

10 THE JURY: Good morning.

11 THE COURT: All right. We will continue with the  
12 examination of the witness.

13 As you approach the witness stand let me just  
14 remind you, ma'am, that you previously were placed under  
15 oath. That oath is still applicable at this point in time.  
16 Do you understand that?

17 THE WITNESS: Yes.

18 THE COURT: Okay. Thank you very much. We will  
19 continue.

20 DIRECT EXAMINATION (Continued)

21 BY MS. CHRISTENSEN:

22 Q Good morning, Ms. DeLaittre.

23 A Good morning.

24 Q When we left off on Friday we were discussing your  
25 second visit to the clinic and the forms that you filled

1 out.

2 So after you finished filling out the forms what did  
3 you do with them?

4 A Gave them to Larry Gratton.

5 Q Did you see what he did with them?

6 A He gave them to the front desk.

7 Q How long did you wait before you saw the doctor,  
8 approximately, on your second visit?

9 A I'm not sure, but it could have been two to three  
10 hours.

11 Q Before you saw the doctor did you see the nurse for  
12 anything?

13 A She took my blood pressure.

14 Q So then after you got into the examination room on that  
15 second visit what happened?

16 A We told him we wanted oxys. I really don't recall what  
17 happened.

18 Q Do you remember what milligram strength of Oxycontin  
19 you might have requested?

20 A They were 80s.

21 Q What did he say when you requested the 80-milligram  
22 Oxycontin?

23 A He asked us if we were drug addicts.

24 Q Did he give you a prescription for 80-milligram  
25 Oxycontin on that second visit?





JOHN A. CLARKE  
EXECUTIVE OFFICER / CLERK

AIRPORT COURTHOUSE  
11701 S. LA CIENEGA BLVD.  
LOS ANGELES, CA 90045-6260

*Superior Court of California  
County of Los Angeles*

DATE: 11/30/04

DEFENDANT: Masoud Banded

CASE NUMBER: 8WL 01242

Receipt and disposition of your motion pursuant to:

1203.4 PC

1203.4a PC

is

GRANTED

DENIED

The expungement is being returned for the following reasons:

- 1. Defendant under 21 years of age at the time of conviction.
- 2. Defendant has sustained other convictions.
- 3. Probationary period is still in effect.
- 4. One year has not elapsed since time of conviction.
- 5. Felony matters are not entitled to relief under these sections.
- 6. Other \_\_\_\_\_

John A. Clarke  
Executive Officer / Clerk  
By \_\_\_\_\_



APPENDIX

D

4. BAMDAD is a medical doctor currently licensed by the State of California and who currently maintains a DEA registration. BAMDAD owns and operates a clinic in San Fernando, California.<sup>1</sup> As set forth further below, based on evidence seized in this investigation, including consensually-monitored, recorded and/or videotaped meetings with undercover DEA agents, there is probable cause to believe that BAMDAD has accepted cash payments for writing huge numbers of prescriptions for controlled substances that are not medically necessary or indicated. As a result, highly addictive prescription controlled substances, including oxycodone and hydrocodone, have been diverted from legitimate medical use into the community for an illegitimate use. Indeed, on April 14, 2008, one of BAMDAD's patients died of an apparent overdose of prescription drugs that he obtained with prescriptions written by BAMDAD on April 10, 2008.

~~5. This affidavit is based on personal knowledge that I have gained from my participation in this investigation as well as information from the following sources, among others:~~

a. Oral and written reports and other supportive documentation about this investigation, and others, which I have received from other federal agents and other law enforcement

---

<sup>1</sup> BAMDAD also owns a clinic in Glendale, California, which is not the subject of this search warrant.

APPENDIX

**E**

APPENDIX E

The American Bar Association ("ABA") agreement with Judge Boyd and Root on "Counsel should be made available in a to a criminally accused person for conior at or before any appearance before a officer, including the first appearance," standards declare. Michigan is taking steps to address this "We're solving a problem that we've Michigan for far too long," declared nor Rick Snyder. During a recent pilot

project in which counsel was appointed for all arraignments in Judge Boyd's county, 13 percent of the cases scheduled for arraignment were dropped before the hearings even took place because defense attorneys and prosecutors resolved matters out of court. In addition, the average case length fell by 20 percent, from approximately 32 days to around 26 days. In May 2017, the Michigan indigent defense commission appointed by Governor Snyder in 2013 revised its legal representa-

tion standards to make counsel mandatory at arraignment. Of course, additional lawyers will require additional legislative funding, admits commission executive director Jonathan Sacks. It remains to be seen if the Michigan Legislature will fund the reforms in 2018. Regardless; it is a positive development, and one that hopefully other states will follow.

Sources: [www.americanbar.org](http://www.americanbar.org), [michiganidc.gov](http://michiganidc.gov), [www.theatlantic.com](http://www.theatlantic.com)

## Georgia Supreme Court Reverses Mutually Exclusive Guilty Verdicts

by Christopher Zoukis

GEORGIA SUPREME COURT ANSWERED (unusual), yet significant, question on ber 11, 2017. Can a conviction that s proof that a rental car was stolen out the state coexist with a conviction that s proof that the same car was stolen in e? Both a trial court and an appellate id yes. The Georgia Supreme Court, g the old saw known as common sense, d and reversed.

ndall Dee Jones rented a car in Tennes rental agreement provided for 800 er a four-day period. However, Jones ed to drive to California and back, 5,109 miles on the vehicle and then return it on time.

rental agency reported the car sto- Jones was pulled over while driving Georgia. He was arrested and charged ft by conversion (OCGA §16-8-4(a)) ft by bringing stolen property into (OCGA § 16-8-9). The jury found lty on both counts, and the trial court d him to concurrent five-year terms to and \$1,472 in restitution.

s appealed, arguing that the two s were mutually exclusive. The ap- urt upheld the convictions, but the Supreme Court reversed, agreeing s that the convictions were indeed exclusive.

Supreme Court explained that ven- mutually exclusive "where it is legally lly impossible to convict the accused ounts." In order to convict Jones of ing stolen property into Georgia, had to prove that the car was stolen tate. In order to convict Jones of onversion, the State had to prove it was stolen in Georgia. These two

requirements cannot coexist.

"To find Jones guilty of theft by bringing the stolen Mazda into Georgia, the jury must have determined that he knew or should have known the Mazda was stolen [by him] in another state," observed the Court. "If Jones stole or converted the Mazda in another state, he could not at the same time have stolen or converted it in Georgia."

"Conversely," the Court continued, "if Jones stole or converted the Mazda in Georgia, he

could not have brought stolen property into the state under OCGA § 16-8-9, because that Code section applies to property stolen in another state. In finding Jones guilty on both counts, the jury necessarily reached two positive findings of fact that cannot logically mutually exist."

Since the two guilty verdicts are mutu- ally exclusive, the Georgia Supreme Court concluded that "reversal of both verdicts is required." See: *Jones v. State*, 2017 Ga. LEXIS 973 (2017).

## Two-Party Consent Law Forces Dismissal of 61 Cases in Washington Sting

SIXTY-ONE OF 110 MEN ARRESTED IN AN ambitious prostitution sting in Bellevue, Washington in August 2017 have had their cases dismissed. Police who made the arrests recorded audio of part of the operation in violation of Washington state law.

Bellevue Police Department and King County Sheriff's personnel posted online sex-for-sale advertisements, which netted 110 responses. When the men, many of whom were local tech workers, showed up at the condc where the sex was to take place, they were arrested by police posing as sex workers.

There was one problem, however, with many of the arrests. According to Bellevue Police Chief Steve Mylett, cameras recording several of the arrests also inadvertently captured audio. Washington state law requires two-party consent in order to legally record the audio of conversations, so the accidental recording of audio necessitated dismissal of 61 cases.

According to Mylett, "Nobody was wired for sound and there were no microphones,"

he said. "We can't use audio and everybody knew it. There was no way in the world that any of the officers were going to jeopardize this operation." He believes that a technical glitch is the likely reason for the illegal audio recordings.

Regardless of the reason for the recordings, police came in for their share of ridicule for their inordinate attention on a victimless crime. *The Stranger*, a local newspaper, snidely commented: "Perhaps the police will shift their focus to a much more serious threat to public health than non-trafficked adults consensually buying and selling sex: dogs in restaurants."

The story is a reminder of the ramifications of two-party consent laws, which require the consent of all parties to a conversation in order to make an audio recording. Currently, only nine states are true two-party consent states: California, Connecticut, Florida, Maryland, Massachusetts, Montana, New Hampshire, Pennsylvania, and Washington.

Sources: [www.thestranger.com](http://www.thestranger.com), [www.dnslp.org](http://www.dnslp.org)

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# APPENDIX

# F

APPENDIX F

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor



MEDICAL BOARD OF CALIFORNIA  
ENFORCEMENT FIELD OPERATIONS  
VALENCIA DISTRICT OFFICE  
27202 Turnberry Lane, No. 280  
Valencia, CA 91355  
(661) 295-3032 Fax (661) 295-3030



PERSONAL & CONFIDENTIAL

April 18, 2007

Americare - Medical and Dental  
Attn: Masoud Bamdad, M.D.  
326 North Maclay Avenue  
San Fernando, CA 91340

RE: Case No. 05-2006-178986

Dear Dr. Bamdad:

The Medical Board of California has concluded its investigation of allegations concerning prescribing without a medical exam and prescribing to or treating an addict. The investigation determined that no violation has occurred at this time and no further action is anticipated.

Thank you for your cooperation during the course of the Board's investigation.

Sincerely,

A handwritten signature in cursive script that reads 'Ellen Coleman'.

Ellen Coleman  
Senior Investigator