

## Court rules against Limbaugh on records

The talk-show host plans to appeal the decision on the seizure of his medical data.

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WEST PALM BEACH -- For months, Rush Limbaugh and his lawyers argued vigorously that Limbaugh's privacy rights had been violated when local prosecutors seized his medical records.

An appeals court quietly ruled Wednesday that they were wrong.

In a 2-1 written opinion, justices of the 4th District Court of Appeal ruled that investigators' use of a search warrant for medical records was proper. The state's right to seize the records is not limited by a patient's right to privacy, Chief Justice Gary Farmer wrote for the court.

The decision pushed the investigation of the conservative talk-show king back into the headlines, but Limbaugh, 53, plans a series of appeals.

At the beginning of his radio show Wednesday, Limbaugh put a positive spin on what appeared to be a big loss.

"There is no disappointment or glee or exhilaration. It is just the next phase of this whole process. . . . In the strict sense, you'd have to say the state has won this round. This is not yet a victory for the state. We will continue to fight this as we have fought it all the way," he said.

Limbaugh keyed on a dissent by Judge Melanie May, who wrote that her fellow justices had their "eyes wide shut" in regard to the right of privacy with a person's medical records.

Limbaugh, who has admitted he became addicted to painkillers, has not been charged with a crime. He is under investigation for alleged doctor-shopping, or seeking duplicate prescriptions from multiple doctors. He denied the allegations on the air, saying prosecutors were on a "fishing expedition."

Limbaugh has repeatedly flogged State Attorney Barry Krischer on the

airwaves. Krischer answered Wednesday in a prepared statement.

"This office did not violate any of Mr. Limbaugh's rights, constitutional or statutory, but to the contrary acted in accord with Florida law. . . . Mr. Limbaugh's rights have been and will continue to be scrupulously protected, as are the rights of all individuals investigated by my office," he said.

Krischer declined further comment, citing the ongoing investigation.

Limbaugh's attorney, Roy Black, held a news conference later in the afternoon at a private club overlooking Miami's Biscayne Bay. Black scoffed at Krischer's use of the word "scrupulously."

It's hardly scrupulous when armed officers enter a doctor's office and seize records in plain view of patients, Black said.

Black said the judges got it wrong. He said he would file another appeal with that court, then possibly with the Florida Supreme Court.

Prosecutors seized all records, not just those pertaining to painkiller prescriptions, Black said. He said some of the records concern medical procedures that would be highly embarrassing if revealed publicly.

"He would be hearing about it for the next 10 years," Black said.

The American Civil Liberties Union, hardly a political ally of Limbaugh's, joined the case, arguing for special notification to patients if their medical records are going to be taken. The ACLU said Wednesday it would continue to join with Limbaugh in his appeals.

"Rush Limbaugh's celebrity status is secondary to the fundamental privacy issues that arise in this case," said Randall Marshall, legal director of the ACLU of Florida. "What is at stake here is the medical privacy of millions of people in Florida and the need to protect people against unnecessary government intrusion into their medical records."

The case is believed to be the first exact test of medical records vs. search warrants. Limbaugh argued that prosecutors should have notified him with a subpoena, the most commonly used method. Prosecutors said they do not have to tell suspects they are about to seize evidence.

Wednesday's decision is not expected to spawn a flurry of seizures by search warrant. The appeals are expected to delay the courts' resolution of the issue for months.

Meanwhile, the records will continue to be sealed and stored in a clerk's evidence room, out of reach of either side.

Limbaugh's drug battle became national news a year ago after *The National Enquirer* published a story quoting his former housekeeper, Wilma Cline, as saying she provided Limbaugh with thousands of pain pills over a four-year period. Cline and her husband had told local prosecutors the same story.

Soon afterward, Limbaugh went on his radio show, announced he was addicted to prescription painkillers and entered a 30-day treatment program. He returned to his show on Nov. 17, 2003.

A week later, Krischer's office began taking his medical records from three doctors with offices in West Palm Beach and Jupiter and one in Los Angeles. The evidence prosecutors showed a judge to obtain the search warrants were records from only one pharmacy.

The records showed Limbaugh had received more than 1,900 painkillers from March through September.

At the request of *The Palm Beach Post*, lawyer and pharmacist Randy Berman reviewed the prescription records prosecutors used to get their search warrants. Berman was a longtime assistant public defender. He has been qualified by the federal court as an expert witness in pharmaceutical matters.

The prescription list documents large amounts of commonly abused painkillers, Berman said. But the vast majority of the prescriptions were written by one doctor.

"It's the actions of an addict, not a doctor-shopper," Berman said. "Either he was stockpiling or really taking too much."

One stark example: Limbaugh received 334 tablets of Norco and Lorcet during a one-week period beginning in May 2003, records show. One doctor prescribed 304 of the tablets.

Berman said he thought the larger question in the Limbaugh case is the actions of the doctor.

"If he's writing all this stuff, he should be held accountable for facilitating this," Berman said. "It's either pharmacist abuse or doctor abuse or drug abuse. But it's not doctor-shopping."

Black said Wednesday that two of the doctors from whom Limbaugh sought prescriptions were partners in a practice. It is the "height of absurdity" to allege doctor-shopping, Black said, and shows how little research and investigation went into the case.

Limbaugh still receives outpatient follow-up treatment for his addiction, Black said.

In June, the news spread that Limbaugh and his third wife, Marta, were divorcing. The Palm Beach resident since has been linked to CNN anchor Daryn Kagan.

Kagan was on the air Wednesday morning before news broke of the appellate decision. After a commercial, she was off the air. A CNN spokeswoman said the move was made to allow another anchor to report the Limbaugh story.

*Staff writers Eliot Kleinberg and Alan Gomez contributed to this story.*