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Prosecuted doctors have suffered enough

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Before I started following the case of the physician brothers, David and Randy Chube, I had never heard of the controversial federal sentencing provision known as "relevant conduct."

It's something you'd expect to find in the pages of a Kafka novel, not an American courtroom.

David, 51, and Randy, 47, grew up in Gary, in the same beachside neighborhood as my wife. David settled in Lincoln Park and Randy in the western suburbs, but they chose to practice family medicine alongside their father, Dr. David Chube Sr., in their medically underserved hometown, battered for decades by shuttered steel mills, abandoned storefronts and dying dreams.

Randy won awards for his treatment of HIV and AIDS patients, often for free. David, a former college basketball player, was funny and friendly -- Dr. Charm with a jump shot.

When the brothers spun off from their dad's practice in the late 1990s, their practice quickly grew to 6,000 patients in Gary and nearby Munster.

Then their world caved in.

In 2004, federal prosecutors likened the African-American doctors to common "street corner drug dealers" for allegedly over-prescribing the powerful pain-killer OxyContin and other prescription drugs.

In those days, targeting doctors prescribing OxyContin was "the flavor of the month," as one former federal prosecutor puts it.

"There is always a real cachet associated with going after professionals, as opposed to basic civilians," the ex-fed said. "Getting doctors is sort of sexy."

The Chubes each were indicted on 33 counts, including unlawful distribution of narcotics and conspiracy. A prosecution expert testified that the brothers' patient charts were sloppy and incomplete. He said the brothers had not ordered enough tests. He reviewed 98 patient files out of 6,000 and concluded that there was no legitimate medical purpose for dozens of prescriptions.

But of the 15 patients who testified at the Chube's two-week trial in federal district court in Hammond in 2006, 11 said they had legitimate, sometimes searing, pain. The other four said they had lied to the Chubes about their suffering. The jury acquitted Randy of 32 of the 33 counts. David was acquitted of 27 counts.

According to the sentencing guidelines, Randy should have faced probation or, at worst, six months in prison, and David 21 to 27 months. Incredibly, by applying the "relevant conduct" provision, under which acquitted crimes and even uncharged crimes can be calculated into sentencing, Judge Rudy Lozano sent Randy to federal prison for five years. David was sentenced to 15 years.

Last year, the 7th Circuit Court of Appeals threw out the sentences, saying the judge had relied on expert statements in calculating relevant conduct that were "too imprecise and indefinite to establish the illegality of all the prescriptions in all of the files."

A new sentencing hearing was ordered. David was released from prison after serving 30 months. Randy was released after 24 months, more than a year longer than the guidelines ceiling without relevant conduct.

In September, they stood before Lozano for resentencing. They asked for time served, but the judge seemed on the verge of sending them back to prison before suddenly rescheduling, after a meeting with lawyers, the hearing for Nov. 17. Sounding irritated, the judge told the Chubes to be prepared to be taken into custody on that day.

But the brothers have been punished enough.

Because of their convictions, they have lost the right to practice medicine. They have lost hundreds of thousands of dollars in business and legal bills. They have lost precious time with their young children. And Gary has lost two physicians.

It's time to give the Chubes' their lives back.

Justice is supposed to be just.

In this case, that's the only "relevant conduct" that counts.

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