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TOP STORY

Federal jurors in Clarksburg, WV, convict Pennsylvania doctor on some counts, acquit on others

by Matt Harvey MANAGING EDITOR Jan 15, 2019




Dr. Felix Brizuela Jr. was convicted of 15 counts alleging he distributed controlled substances outside the bounds of professional medical practice. He was acquitted on six similar counts, and also was acquitted on all 16 counts alleging he illegally received money in violation of the federal anti-kickback statute.

Staff photo by Matt Harvey

CLARKSBURG — A federal jury in Clarksburg determined a Pennsylvania doctor illegally distributed controlled substances 15 times in Morgantown, where he had a practice.

The jury cleared Dr. Felix Brizuela Jr., 61, of six other counts under the same statute: Distribution of controlled substances outside the bounds of professional medical practice.

Jurors acquitted Brizuela on all 16 counts alleging he was compensated illegally in violation of the federal anti-kickback statute.



Brizuela will be sentenced at a later date by Senior U.S. District Judge Irene M. Keeley. First, assistant U.S. attorneys Robert H. McWilliams Jr. and Sarah Wagner probably will have to defend the convictions from post-trial motions likely to be filed by attorney Michael DeRiso of Pittsburgh firm DeRiso DeRiso Suher & Jeffries, and Morgantown's Timothy Linkous.

If the convictions stand, another major battle will loom between the sides over total relevant conduct, which will be a critical factor in sentencing.

Jurors deliberated about five hours Friday night, then returned to deliberate from 9 a.m. until about 10:30 p.m. Monday before returning their verdicts.

Before that, they had listened and watched as the government painstakingly presented evidence via witnesses and documents on each count, and the defense just as carefully attacked that evidence.

During the trial, Wagner told jurors that the case is "about a doctor — the defendant — who broke the rules."

Brizuela ignored multiple red flags, including failed urine screens, in continuing to prescribe pain medication to five patients, Wagner said.

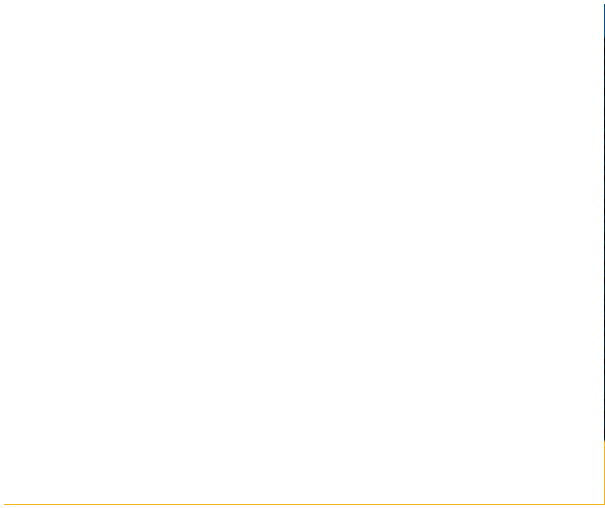
A motive for doing so, she added, was to keep the kickback scheme going involving the urine screens for Medicare/Medicaid patients.

Not so, DeRiso said.

The government's case would withstand scrutiny only if Brizuela was prescribing for pain. Instead, he has real patients with real neurological problems who needed the medications prescribed to them, DeRiso indicated.

Also, Brizuela had thousands of patients, but the government "cherry picked" just five, he said. And even within that tiny subset, the government also focused on only certain medications rather than the entire course of treatment, he indicated.

The alleged kickback scheme, if there was one, had nothing to do with Brizuela, according to DeRiso. He acknowledged his client made money by sending private insurance clients' urine screens to a Dallas company, but rejected the government's contention involving the government-insured patients of Brizuela.



The counts for which Brizuela was convicted alleged the following wrongdoing in Monongalia County: Distribution of oxycodone, Aug. 23, 2013, June 10, July 11, July 30, Oct. 21 and Dec. 18, 2014, Feb. 4, Feb. 17 and Aug. 28, 2015; distribution of fentanyl, May 3 and June 10 of 2014; and distribution of oxymorphone, Dec. 15, 2014, and Jan. 31, March 24, and July 5, 2015.

Brizuela also is facing another count in which he and Dr. George P. Naum III, 58, of Wheeling, and Eric Drake, 47, of Weirton, are charged with conspiracy to distribute controlled substances outside the bounds of professional medical practice. That alleges wrongdoing between September 2008 and Sept. 13, 2016, at Advance Healthcare Inc. in Hancock County.

Represented by Toledo, Ohio, attorney Ryan Parker and Weirton lawyer Kevin Pearl, Drake has pleaded guilty to the conspiracy charge and is to be sentenced Feb. 22.

Naum, represented by Ronald Chapman II of Troy, Michigan, and Elgine McArdle of Wheeling, and Brizuela are set for trial on the Hancock County allegations in April.

Chapman said Dr. Naum “looks forward to his day in court,” and added that “we feel he always prescribed appropriately” when he was with the company he was with at that time.

DeRiso didn't immediately return a phone message.

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