

## **APPENDICES**

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## APPENDIX A

### *Ruan v. United States (No. 20-1410)*

Pet. App'x E at 138a-39a.

#### **Jury Instructions**

Members of the jury, it is now my duty to instruct you on the rules of law that you must use in deciding this case. After I have completed these instructions, you will go to the jury room and begin your discussions—or what we call your deliberations. . . .

Title 21, United States Code, Section 841(a)(1) makes it a crime for a physician to knowingly or intentionally distribute or dispense a controlled substance unless it was done within the usual course of professional practice and for a legitimate medical purpose. Dispense can mean to prescribe a controlled substance. Distribute can mean to deliver other than by dispensing a controlled substance. For a controlled substance to be lawfully dispensed by a prescription, the prescription must have been issued by a practitioner both within the usual course of professional practice and for a legitimate medical purpose. If the prescription was issued either, one, not for a legitimate medical purpose or, two, outside the usual course of professional practice, then the prescription was not lawfully issued.

A controlled substance is prescribed by a physician in the usual course of a professional practice and, therefore, lawfully if the substance is prescribed by him in good faith as part of his medical treatment of a patient in accordance with the standard of medical practice generally recognized and accepted in the United States. The defendants in this case maintain at all times they acted in good faith and in accordance with

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standard of medical practice generally recognized and accepted in the United States in treating patients.

Thus a medical doctor has violated section 841 when the government has proved beyond a reasonable doubt that the doctor's actions were either not for a legitimate medical purpose or were outside the usual course of professional medical practice.

**APPENDIX B**

**Kahn v. United States (No. 21-5261)**

Joint App'x Vol II at 485-87.

**Jury Instructions**

To prove Defendant Shakeel A. Kahn guilty of one or more of these counts, the Government must prove beyond a reasonable doubt each of the following elements:

First, on or about the date alleged in the each count [30] as set forth in the table contained in the next jury instruction and in the District of Wyoming; second, Defendant Shakeel A. Kahn distributed or dispensed a mixture or substance containing a detectable amount of oxycodone to another person; and, third, Defendant Shakeel A. Kahn, knowingly or intentionally distributed or dispensed the controlled substance outside the usual course of professional medical practice or without a legitimate medical purpose.

If the Government fails to prove each of these elements by proof beyond a reasonable doubt, you must find the defendant not guilty. If, however, the Government proves every element by proof beyond a reasonable doubt, you should find the defendant guilty.

...

The good faith of Defendant Shakeel A. Kahn is a complete defense to the charges in Count 1 conspiracy to commit a federal drug crime as well as charges in Counts 4, 6, 7, 11, 14, 16, 19, and 20, knowingly and unlawfully dispensing and/or [31] distributing oxycodone outside the usual course of professional practice and without a legitimate medical purpose because good faith on the part of Defendant Shakeel Kahn would be inconsistent with knowingly and

intentionally distributing and/or dispensing controlled substances outside the usual course of professional practice and without a legitimate medical purpose which is an essential part of the charges.

Good faith connotes an attempt to act in accordance with what a reasonable physician should believe to be proper medical practice. The good faith defense requires the jury to determine whether Defendant Shakeel Kahn acted in an honest effort to prescribe for patients' medical conditions in accordance with generally recognized and accepted standards of practice.

A defendant's good faith must have existed at the time the unlawful acts were committed. One cannot assert good faith as a defense if the opinions or beliefs advanced as justifications for the good faith defense are formulated after the commission of criminal acts. If you find that a defendant lied about some aspect of the charged conduct, you may consider that in addition to other evidence presented in determining whether the defendant acted in good faith.

The burden of proving good faith does not rest with the defendant because the defendant does not have any obligation to prove anything in this case. It is the [32] Government's burden to prove to you beyond a reasonable doubt that a defendant knowingly or intentionally acted unlawfully. In determining whether the Government has proven that a defendant intentionally or knowingly violated the law, you should consider all of the evidence in the case bearing on the defendant's state of mind.

**APPENDIX C**

**Sakkal v. United States (No. 22-84)**

Pet. Br. at 18a-19a.

**Jury Instructions**

In order to find the defendant guilty of a violation of 21 U.S.C. 841(a)(1), the government must prove beyond a reasonable doubt each of the following elements:

(1) The defendant distributed or dispensed a controlled substance as alleged in these counts of the Indictment.

(2) The defendant acted knowingly and intentionally in distributing or dispensing that controlled substance; and

(3) The defendant's act was not for a legitimate medical purpose in the usual course of his professional practice.

...

The term "usual course of professional practice" means that the practitioner has acted in accordance with the standard of medical practice generally recognized and accepted in the United States.

...

If a physician dispenses a drug in good faith in the course of medically treating a patient, then the doctor has dispensed the drug for a legitimate medical purpose in the usual course of accepted medical practice. That is, he has dispensed the drug lawfully.

"Good faith" in this context means good intentions and an honest exercise of professional judgment as to a patient's medical needs. It means that the defendant acted in accordance with what he reasonably believed to be proper medical practice.

**APPENDIX D****Santos v. United States (No. 17-00420)**

D. Ct. Doc. 337 (Jury Instr.) at 16-21, 23.

**Jury Instructions**

Good faith in this context means good intentions and the honest exercise of good professional judgment as to a patient's medical needs. Good faith connotes an observance of conduct in accordance with what the physician believes to be proper medical practice. In determining whether the defendant acted in good faith, you may consider all the evidence in the case that relates to that conduct.

Whether the defendant acted outside the usual course of professional practice is to be judged objectively by reference to standards of medical practice generally recognized and accepted in the United States, including the State of Florida. However, whether the defendant acted without a legitimate medical purpose depends on the defendant's subjective belief that he was distributing the controlled substance for a legitimate medical purpose. Therefore, in order for the Government to establish that the defendant was acting without a legitimate medical purpose, the Government must prove beyond a reasonable doubt that the defendant did not subjectively believe he was acting with a good faith belief that he was distributing the controlled substance for a legitimate medical purpose.

...

The Defendants, who are licensed medical doctors, can be found guilty of each offense charged pursuant to Section 841 (Counts Two and Counts Five through Nine) only if all the following facts are proved beyond a reasonable doubt:



First: That the Defendant distributed, dispensed, and caused to be distributed and dispensed, the controlled substance(s) as charged; and

Second: That at the time of the distribution and dispensing, the Defendant knew that he was distributing and dispensing a controlled substance not for a legitimate medical purpose and not in the usual course of professional practice.

Whether the Defendant acted outside the usual course of professional practice is to be judged objectively by reference to standards of medical practice generally recognized and accepted in the United States, including the State of Florida. However, whether the Defendant acted without a legitimate medical purpose depends on the Defendant's subjective belief whether he was distributing the controlled substance for a legitimate medical purpose. Therefore, in order for the Government to establish that the Defendant did not subjectively believe that he was acting with a good faith belief that he was distributing the controlled substance for a legitimate medical purpose. You may consider all of the evidence admitted at trial, including, but not limited to, the circumstances surround the prescribing of the substance in question, the statements of the parties to the prescription transactions, any expert testimony as to what is the usual course of medical practice, and any other competent evidence bearing on the purpose for which the substances in question were prescribed.

...

Where a statute specifies several alternative ways in which an offense may be committed, the Second Superseding Indictment may allege the several ways in the conjunctive, that is, by using the word "and;" therefore, if only one of the alternatives is proved beyond a

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reasonable doubt, that is sufficient for the conviction, so long as the jury agrees unanimously as to at least one of the alternatives.