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FLCCC Alliance Statement on Court’s Reversal of Case Against DHHS for Telling the Public to “Stop it” Regarding Taking Ivermectin to Prevent and Treat COVID-19

WASHINGTON, D.C. – Yesterday, the Fifth Circuit Court of Appeals reversed a lower court's ruling that “sovereign immunity” protects the Food and Drug Administration (FDA) from any wrongdoing or harm in telling the public to stop taking ivermectin, a safe, well-studied, and proven drug for the prevention and treatment of COVID-19.

In their opinion, Judges Clement, Elrod, and Willett state, “FDA argues that the Twitter posts are ‘informational statements’ that cannot qualify as rules because they ‘do not ‘direct’ consumers, or anyone else, to do or refrain from doing anything.’ We are not convinced.”

“We are very pleased with this development and extremely proud of our colleagues for taking a stand against a government health agency that is clearly overstepping its authority,” said Pierre Kory, M.D., M.P.A., president and chief medical officer of the FLCCC. “The FDA’s campaign against ivermectin continues to be used as an excuse by hospitals to deny access to a lifesaving treatment and weaponized by medical boards to threaten the licenses of doctors who stray from the mainstream to prescribe a drug that has been proven in controlled trials to safely treat hundreds of thousands of patients around the world.”

The lawsuit, *Apter et al v. Dep’t. of Health and Human Services et al*, was brought by Robert Apter, MD, Mary Talley Bowden, MD, and FLCCC co-founder, Paul E. Marik, MD, and first filed in the U.S. District Court on June 2, 2022. It stated that the FDA acted outside of its authority and illegally interfered with the doctors’ ability to practice medicine with an aggressive effort to stop the prescribing of ivermectin for the prevention and treatment of COVID-19. The case was later dismissed by the court citing that the FDA had “sovereign immunity,” giving the agency absolute protection from any wrongdoing or harm in directing the public, including health professionals and patients, to not use ivermectin, a drug that has received full FDA approval for human use. Earlier this year, Apter et al filed an appeal in the U.S. Court of Appeals for the Fifth Circuit requesting the Court reverse the lower court’s dismissal of the lawsuit.

The Court’s reversal was issued yesterday with the ruling, which said “FDA is not a physician. It has authority to inform, announce, and apprise—but not to endorse, denounce, or advise. The Doctors have plausibly alleged that FDA’s Posts fell on the wrong side of the line between telling about and telling to.” The ruling goes on to say the “FDA can inform, but it has identified no authority allowing it to recommend consumers ‘stop’ taking medicine.” And finally, “Even tweet-sized doses of personalized medical advice are beyond FDA’s statutory authority.”

“The work of the legal team at Boyden Gray has been nothing short of superb,” Kory added. “We are very fortunate to have them on the side of our doctors in this case.”

The Fifth Circuit Court’s ruling can be found here: https://covid19criticalcare.com/wp-content/uploads/2023/09/Apter-Reversal-22-40802_Documents.pdf

The FLCCC filed its amicus brief in support of the lawsuit in February of this year. A copy of the brief can be found here: <https://covid19criticalcare.com/wp-content/uploads/2023/02/FLCCC-Apter-v-HHS-Amicus-2-13-23-FINAL.pdf>

About the FLCCC Alliance

The FLCCC Alliance was organized in March 2020 by a group of highly published, world renowned critical care physicians and scholars with the academic support of allied physicians from around the world. FLCCC’s goal is to research and develop lifesaving protocols for the prevention and treatment of COVID-19 in all stages of illness including the I-RECOVER protocols for “Long COVID” and Post Vaccine Syndrome. For more information: www.FLCCC.net