

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-2007

LESTER GRINSPOON, M.D.,
Petitioner,

v.

DRUG ENFORCEMENT ADMINISTRATION,
Respondent.

Before

COFFIN and TORRUELLA, Circuit Judges,
and PETTINE, * Senior District Judge.

ORDER OF COURT

Entered: December 14, 1987

The Drug Enforcement Administration (DEA) has filed a petition for rehearing with suggestion for rehearing en banc.

The panel of judges that rendered the decision finds no merit in the DEA's argument that it misinterpreted the standard that the Administrator applied in determining whether MDA has no "currently accepted medical use in treatment in the United States" and not "accepted safety for use . . . under medical supervision," pursuant to the controlled Substances Act, 21 U.S.C. § 812 (b) (1). In its brief and argument before the panel, the DEA never asserted other than that the Administrator interpreted those terms to mean "that the FDA has evaluated the substance for safety and approved it for interstate marketing in the United States pursuant to the Federal Food, Drug, and Cosmetic Act, 21 USC § 355." Grinspoon v. Drug Enforcement Administration, 828 F.2d 881, 884 (1st Cir.). It is not precluded from advocating, on remand, that the Administrator apply a more flexible approach.

The petition for rehearing is denied.

By the Court:

Francis P. Scigllano

Clerk.

*Of the District of Rhode Island, sitting by designation.

[cc: Messrs. Cotton and Harbin]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-2007

LESTER GRINSPOON, M.D.,
Petitioner,

v.

DRUG ENFORCEMENT ADMINISTRATION,
Respondent.

Before

CAMPBELL, Chief Judge,
COFFIN, BOWNES, BREYER, TORRUELLA and SELYA,
Circuit Judges.

ORDER OF COURT

Entered: December 14, 1987

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for the holding of a rehearing en banc, having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeal be heard or reheard by the Court en banc,

It is ordered that suggestion for rehearing en banc be hereby denied.

By the Court:

Francis P. Scigllano

Clerk.

[cc: Messrs. Cotton and Harbin]