Dominating pain relief by increasing the opioid market. A tale of incredible dishonesty.

By Editorial Staff med expose'

It's becoming more common to see drug manufacturers negotiate "false claims" settlements for millions and billions of dollars.[1-2] Most of these settlements have to do with violations in the marketing of the drugs they produce and sell.

Wikipedia lists the **top 20** settlements: more than $17 billion in criminal and civil penalties between 2001-2012 alone. Add in the Johnson & Johnson settlement from last year[1] and the number is closer to *$20 billion* or about $1.5 billion a year.
Looking at the violations and the insidious nature of the drug companies' marketing tactics, one wonders if these penalties are accepted by the pharmaceutical industry as a cost of doing business. With annual sales well over $330 billion and estimated marketing budgets of **$72 billion**,[3] a few billion in annual fines is not likely to make much of an impact, regardless of their PR rhetoric when "agreeing" to pay the fines.

A Difference Maker?

A new lawsuit brought forth by the California counties of Orange and Santa Clara may begin to make a difference.[4] **The suit** is directed at nine manufacturers of opioids – drugs that have been over marketed to the point that "in 2009, there were more than twice as many deaths from prescription opioid overdoses (15,597) than from cocaine (4,350) and heroin (3,278) put together."

One of the attributes that makes this lawsuit so interesting is the detail regarding the well-crafted facade allegedly designed by the defendants. According to the lawsuit, this two-decade facade effectively "(1) misrepresented the efficacy of opioids, (2) trivialized or obscured their serious risks and adverse outcomes, and (3) overstated their superiority, compared with other treatments."

The goal, according to the suit, was simple: to expand the market for opioids from their FDA-approved use – for cancer and other end-of-life pain – to chronic pain patients, a much larger market consisting of more than 100 million Americans.

As noted in the lawsuit, "Defendants' marketing efforts were ubiquitous and highly persuasive. Their deceptive messages tainted virtually every source doctors could rely on for information and prevented them from making informed treatment decisions. Directly and through public relations firms they hire and advocacy groups and professional societies they finance and influence, Defendants have funded, drafted, edited, approved, published, and distributed websites, books, patient education brochures, videos, and other materials that carry their misrepresentations to targeted groups of doctors (such as family doctors), and patients – particularly veterans and the elderly."

Expanding the Opioid Market

According to the lawsuit, the drug manufacturers worked through professional organizations, researchers, authors, spokespersons, key opinion leaders (KOLs), patient advocacy groups and various PR firms in their effort to paint the picture that opioids were safer, more effective and not likely to be addictive. Apparently, those tactics were extremely effective: The U.S. opioid market now exceeds $10 billion annually.

1. Co-Opting Professional Entities

The drug manufacturers named in the suit allegedly spent years providing significant financial support to various professional organizations, publications and events. According to the suit:

- "Defendants harnessed and warped existing organizations to disseminate their deceptive messages with the expectation that these messages would circulate among and influence the conduct of prescribing physicians and other members of the medical community. These front organizations appeared to be legitimate scientific and patient advocacy organizations (and perhaps started out as such) and publicized seemingly scientific, balanced, and accurate information on opioid use. In fact, the information was false and misleading and paid for and encouraged by Defendants for the purpose of creating a vast market for the use of opioids for chronic pain."
- "Defendants' efforts to shift the paradigm on opioids and pain treatment began soon after their branded opioids were launched. In 2000, the Joint Commission on Accreditation of Healthcare Organizations ('JCAHO'), in conjunction with the University of Wisconsin Pain and Studies Group, declared that pain was the '5th Vital Sign' and required all healthcare practitioners to make pain assessment and management a priority in daily practice."
- "The APS (American Pain Society) /AAPM (American Academy of Pain Management) guidelines promote opioids as 'safe and effective' for treating chronic pain, despite acknowledging limited evidence, and conclude that the risk of addiction is manageable for patients with and without past abuse histories. These guidelines have been a particularly effective channel of deception and have influenced not only treating physicians, but the body of scientific evidence on opioids."
- "Defendants supported the American Geriatric Society, which produced the treatment guidelines ... and education materials focused on elderly patients. According to one news report, the American Geriatric Society received $344,000 in funding from opioid makers since 2009. Five of 10 of the experts on the guidelines panel disclosed financial ties to Defendants, including serving as paid speakers and consultants, presenting CMEs sponsored by Defendants, receiving grants from Defendants and investing in Defendants' stock."
- "In spite of the complete lack of scientific basis, in 2011, Purdue [one of the defendants] sponsored the *Policymaker's Guide*, published by the American Pain Foundation ('APF'), which asserted that 'multiple clinical studies' have shown that opioids are effective in improving daily function, psychological health, and health-related quality of life for chronic pain patients."
- "The U.S. Federation of State Medical Boards itself received support from Defendants during the time it created and published its guidelines for prescription of opioids."
- "Defendants also worked together to promote opioids through the Pain Care Forum, which is comprised of representatives from opioid manufacturers and distributors (including each of the Defendants); doctors and nurses in the field of pain care; health care professional organizations (e.g., the American Academy of Pain Management, APS, and American Society of Pain Educators); patient advocacy groups (e.g., APF, American Chronic Pain Association, and the Northern California Pain Initiative); and other like-minded organizations (e.g., Federation of State

Medical Boards and Wisconsin Pain & Policy Studies Group), almost all of which received substantial funding from Defendants."

- "Important elements of Defendants' unlawful conduct are only now becoming known. Revelations, for example, of Defendants' role in paying third parties for access to the FDA and a voice in formulating standards for the clinical trials for approving new opioid drugs and indications was revealed only recently in an article in [*The Washington Post*]. Defendants were well-aware of their activities, intent, and impact, but hid their influence from the public and from law enforcement and regulatory agencies."
- "Much of Defendants' deceptive marketing occurred at medical conferences and through continuing medical education programs that were open only to registered medical professionals."

2. Converting Key Opinion Leaders

Every medical specialty has key opinion leaders (KOLs) who are well-known due to their positions as researchers, speakers, professors or other positions of authority. The defendants allegedly sought out a number of these KOLs in the medical profession and were successful in influencing them to support and communicate the benefits of opioids, and downplay the risks.

According to the suit, "The KOLs' association with Defendants provided not only money, but also prestige, recognition, research funding, and avenues to publish. This positioned them to exert even more influence in the medical community." The suit further states that the drug makers "identified, encouraged, and compensated high profile KOLs to give talks and advice and author books and articles. Defendants' KOLs offer and serve on the program committees that choose continuing medical education programs, and develop and promote treatment guidelines that promote chronic opioid therapy."

It further alleges that these KOLs "have written, consulted on, edited, and lent their names to books and articles and given speeches and continuing medical education programs supportive of chronic opioid therapy. They served on committees that developed treatment guidelines that, even while acknowledging the lack of evidence for their positions, strongly encourage the use of opioids to treat chronic pain."

The suit provides the following examples of how KOLs were used to further the defendants' deceptive marketing agenda:

- "Dr. Russell Portenoy, Chairman of the Department of Pain Medicine and Palliative Care at Beth Israel Medical Center in New York, is one example of a KOL who Defendants identified and co-opted to further their marketing campaign. With Defendants' support, Dr. Portenoy was dubbed the 'King of Pain' by *Time* Magazine. He co-authored *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases* (1986), which asserted, based solely on 38 cases, that chronic opioid therapy was a safe and effective treatment for patients with intractable non-malignant pain."
- "[Dr. Portenoy}, the pro-opioid, Defendant-funded KOL described above, appeared on Good Morning America in 2010 to discuss the use of opioids long-term to treat non-cancer chronic pain."
- "Dr. Portenoy thus helped to open the door for the use of opioids to treat chronic pain. He served on the American Pain Society/American Academy of Pain Medicine Guidelines Committee, which endorsed the use of opioids to treat chronic pain, and the FDA Anesthetic and Life Support Drugs Advisory Committee, one of a host of FDA advisory committees that serve to provide expertise and technical assistance to assist the FDA decision-making. While he held these positions he also was receiving 'research support,' consulting fees or honoraria from Cephalon, Endo, Janssen, and Purdue (among others), and was a paid consultant to Cephalon and Purdue."
- "Pro-opioid KOL Lynn Webster developed a basic five-question risk screening tool called the Opioid Risk Tool. In 2011, Dr. Webster presented, via webinar, a program sponsored by the

American Academy of Pain Management and defendant Purdue, titled, *Managing Patient's Opioid Use: Balancing the Need and the Risk*."

- "An Endo-sponsored 2007 supplement to *the Journal of Family Practice* contained an article, *Pain Management Dilemmas in Primary Care: Use of Opioids*, by a physician who was on all of Defendants' speakers bureaus, which recommends risk screening by use of the *Opioid Risk Tool* [developed by Dr. Webster], or the *Screener and Opioid Assessment for Patients with Pain*."
- "*Optimizing Opioid Treatment for Breakthrough Pain*, offered by Medscape, LLC from September 28, 2007, through December 15, 2008, was prepared by [Dr. Webster]."
- "Based on a single cancer pain case observed by Purdue executive and KOL David Haddox, Defendants have counseled doctors to treat chronic pain patients on opioids who seem to be addicted with more opioids."

3. Marketing & Influencing Patients

The drug manufacturers allegedly used multiple means to get non-cancer patients to request opioids. This concerted effort to expand their market increased sales dramatically.

"In 2010, 254 million prescriptions for opioids were filled in the U.S. – enough to medicate every adult in America around the clock for a month. Twenty percent of all doctors' visits result in the prescription of an opioid (nearly double the rate in 2000). Opioids – once a niche drug – are now the most prescribed class of drugs – more than blood pressure, cholesterol, or anxiety drugs."

According to the suit, "Defendants created campaigns – including literature, websites, community groups, and programs – related to chronic non-cancer pain from illnesses such as low back pain, shingles, migraines, osteoarthritis, phantom limb pain, fibromyalgia and multiple sclerosis." The suit also alleges that the drug companies:

- "Marketed directly to patients to: (1) encourage them to ask doctors for opioids to relieve chronic pain; and (2) allay their well-founded concerns that opioids were dangerous and addictive."
- "Reached chronic pain patients through written publications, websites, and videos designed to present the purported 'facts' about opioids in a simple, user-friendly manner."
- "Targeted particularly vulnerable, but usually well-insured, groups of patients, such as veterans and the elderly."
- "Leveraged and funded patient organizations and communities – promoting opioids particularly for common conditions, such as headaches, arthritis, fibromyalgia, and back pain."
- "Focused on unbranded advertising – promoting opioids for chronic pain knowing that the creation of a new, expansive market for opioids would benefit all manufacturers."
- "Produced a first-of-its-kind Web-based series called the Let's Talk Pain show hosted by veteran TV journalist Carol Martin. The resource brings together medical doctors, nurses, psychologists, social workers and people with pain to discuss a host of issues from managing health care for pain to exploring integrative treatment approaches to addressing the psychological aspects associated with pain."
- "Ran a facially unaffiliated website called **www.painknowledge.org**. NIPC (National Initiative on Pain Control, an APF initiative) billed itself as 'an integrated education initiative' and promoted its expert leadership team, including 'nationally respected experts in the pain management field.' Painknowledge.org promised that, on opioids, 'your level of function should improve; you may find you are now able to participate in activities of daily living, such as work and hobbies, that you were not able to enjoy when your pain was worse.' Elsewhere, the website touted improved quality of life (as well as 'improved function') as benefits of opioid therapy."
- "APF issued education guides for patients, reporters, and policymakers that promoted the benefits of opioids for chronic pain and trivialized their risks, particularly the risk of addiction. APF also launched a campaign to promote opioids for returning veterans ... promotion of opioids to treat veterans has contributed to high rates of addiction among our returning soldiers. APF

engaged in a significant multimedia campaign – through radio, television and the web – to educate patients about their 'right' to pain treatment – namely opioids."

4. Targeting General Practitioners

The suit alleges that the drug manufacturers "made a concerted effort to reach general practitioners (GPs) through continuing medical education programs ('CMEs'), office visits, and literature specifically aimed at them, and most opioids are prescribed by primary care physicians like GPs." These efforts took various forms, but focused on three areas:

Funding Distorted Research

Cephalon funded, promoted, and distorted studies to promote Actiq for noncancer pain, according to the suit. Similarly, a 2003 scientific study funded by Purdue and co-authored by a Purdue employee concluded that OxyContin is "effective and safe for the management of [chronic diabetes-related pain] and improves QOL [quality of life]." The study asserts that there is "evidence that the risk of psychological dependence or addiction is low in the absence of a history of substance abuse."

A Cochrane Collaboration review of evidence relating to the use of opioids for chronic pain found that 22 percent of patients in opioid trials dropped out before the study began because of the "intolerable effects" of opioids. Defendants were aware of this high drop-out rate as they pushed the FDA to allow them to exclude these patients from clinical trial data, a method of research known as "enriched enrollment," which allowed drug companies to study only those patients who could tolerate opioids.

Sponsoring Promotional Continuing Medical Education (CME) Events

- "Defendants have sponsored thousands of CME programs that promote chronic opioid therapy and support and disseminate the deceptive and biased messages described in this Complaint."
- "Defendants' sales representatives participated in these conferences, encouraged doctors to attend the programs, and held auxiliary events that reinforced and amplified the distorted messaging of the CMEs. The CMEs themselves, however, buttressed by printed disclaimers by Defendants, were marketed to appear evidence-based and unbiased. In fact, like KOLs, the CMEs are particularly effective for disseminating Defendants' messages because doctors rely on these peer-led professional events to deepen their understanding of clinical issues."

Motivating Aggressive Sales Representatives

- "The surveyed doctors reported more than 300 Actiq sales visits in both 2004 and 2005. One general practitioner reported that a Cephalon sales representative visited his office once a month, delivering 60 to 70 coupons for free Actiq at a time. Each coupon was good for six Actiq lollipops."
- An FDA / U.S. Attorney investigation confirmed that "Cephalon had structured its sales quotas and bonuses such that a sales representative could only reach sales goals by selling the drug for chronic non-cancer pain."
- "Purdue also used speaker bureaus, which put on programs at resort locations, starter coupons to attract new patients, funded new front group websites, and, even distributed plush toys and hats, which the Drug Enforcement Administration ('DEA') says had never been done before for a controlled substance."
- "At the same time, Purdue doubled the number of its sales representatives, who received bonuses based on sales quotas and were directed to target the most prolific opioid prescribers. Total sales bonuses in 2001 were $40 million, up from $1 million in 1996."

Interestingly enough, the suit notes that a recent ***Los Angeles Times article*** "revealed that Purdue – since 2002 – has kept a database of 1,800 doctors suspected of inappropriately prescribing its drugs, but did not alert law enforcement or medical authorities to all but a few of these doctors." This database, according to the news report, was whittled down from 3,200 doctors reported as suspicious by Purdue's sales representatives (conduct that must have been so egregious that the sales representatives forewent the chance to earn commissions on the doctors' prescriptions).

The 105-page lawsuit ultimately cites violations involving false advertising, unfair competition and public nuisance. The counties are looking for substantial civil penalties, court orders and "restitution of any money acquired by Defendants' false and misleading advertising." In addition, the action is asking for treble damages (triple the damages).

Tip of the Legal Iceberg?

Another point that makes this lawsuit interesting is the concept of "unfair competition." Consider these allegations:

- "As a direct and proximate result of the foregoing acts and practices, Defendants have received, or will receive, income, profits, and other benefits, which they would not have received if they had not engaged in the violations of Unfair Competition Law described in this Complaint."
- "As a direct and proximate result of the foregoing acts and practices, Defendants have obtained a competitive unfair advantage over similar businesses that have not engaged in such practices."

The question that comes to mind is whether doctors of chiropractic have a claim against these same defendants for lost revenue due to the alleged false advertising, unfair competition – and their admitted focus on back pain patients.

When asked about this possibility, Michael Schroeder, vice president of the National Association of Chiropractic Attorneys, noted: "This [suit] raises some very interesting legal opportunities for the chiropractic profession's crusade for drugless healing. Enterprising chiropractic attorneys across the country will now have a template for holding the medical profession responsible when they engage in the reckless prescription of prescription drugs. There may also be an opportunity to consider a similar action based upon the unfair competition already presented in the current case."

References

1. "Johnson & Johnson to Pay More Than $2.2 Billion to Resolve Criminal and Civil Investigations." Department of Justice, Office of Public Affairs. Nov. 4, 2013.
2. List of largest pharmaceutical settlements. Wikipedia.com.
3. "Big Pharma Spends More on Advertising Than Research and Development, Study Finds." Science Daily, Jan. 7, 2008.
4. *The People of the State of California v. Purdue Pharma L.P.; Purdue, Inc.; The Purdue Frederick Company, Inc; Teva Pharmaceutical Industries, LTD.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc.; Actavis, PLC.*