

In a growing trend, the US Department of Justice (DOJ) indicted two corporate executives and two licensed pharmacists for drug distribution. This is the second time in 2019 that the DOJ acted to hold opioid distributors and manufacturers criminally liable for contributing to the drug crisis.

2019 Criminal Prosecutions

The indictment alleges that an Ohio-based drug manufacturer sold millions of hydrocodone pills to various pharmacies and physicians. The charges are Conspiracy to Distribute and Dispense a Controlled Substance, in violation of Title 21, United States Code, Section 846. The DOJ alleged that the company ignored red flags that its customers were under investigation by the US Drug Enforcement Administration (DEA) and/or diverting thousands of pills illegally.

In the first case brought by prosecutors this year, the chief executive officer and the chief of compliance were named in a criminal indictment that alleged both executives ignored DEA regulations and distributed opioids to pharmacies and providers that were selling and illegally distributing them. Prosecutors had previously investigated, and civilly fined, the corporation.

Prior Actions

Historically, the DOJ used civil and administrative fines and penalties to enforce laws against drug manufacturers. Under federal law, wholesalers are required to report and monitor their sales of controlled substances. Typically, when the DEA suspected wrongdoing or other non-compliance, it would investigate the corporation, evaluate its records, and a civil suit and/or fine would be negotiated. In rarer instances, criminal charges were brought against doctors, pharmacists and other direct distributors for diverting drugs and/or defrauding Medicare in the process. Those prosecutions typically emphasized the federal fraud, rather than the drug distribution.

In 2007, the DOJ settled claims against Purdue Pharma, alleging that the company misled regulators, doctors and others about the risk of addiction to its flagship medication, OxyContin. The company paid a fine, and three executives pled guilty to misdemeanor charges and were required to pay personal fines of more than US\$30 million. Based on the pleas, the US Department of Health and Human Services excluded the executives from federal healthcare programs for 12 years. While the settlement at the time seemed sufficiently aggressive, lawmakers now admit that criminal charges should have been filed against the executives. Purdue continued selling OxyContin, and thousands of patients overdosed and/or died after the settlement.

The DOJ, and in particular the US Attorney's Offices in Ohio and West Virginia, have been forced to consider alternative, and aggressive, responses in the fight against opioid-related deaths and overdoses. In Ohio alone, approximately 5,000 people die from opioid overdoses per year. The DEA's "360 Strategy" to respond to the opioid crisis emphasizes that traditional law enforcement techniques alone cannot stem the tide of drugs into communities, and that prescription opioids, such as hydrocodone, oxycodone and others, have significantly contributed to the rise in heroin, fentanyl and other drugs' popularity.

In April of this year, the DOJ announced that, in roughly four months, the Appalachian Regional Prescription Opioid Strike Force charged 60 defendants across 11 federal districts for their alleged role in illegally prescribing and distributing opioids and engaging in fraudulent healthcare schemes related to narcotics. Defendants included doctors, pharmacists, nurse practitioners and other licensed medical professionals. The task force's success suggests that its investigations will continue to expand to include drug distributors, manufacturers and other actors in the drug supply chain.

As a result of the damage caused by this epidemic, community leaders face increasing pressure to hold responsible corporate executives and other actors who have significantly contributed to the proliferation of pills and the opioid addictions crippling towns across America. Criminal prosecutions carry significant penalties and seek to penalize specific corporate actors, rather than the corporations themselves, which has lasting impact beyond the DOJ's traditional strategy.

Conclusion

The DOJ will continue to find aggressive ways to demonstrate its ability to hold white-collar executives and other corporate actors responsible for their role in creating the opioid crisis. Expect to see more indictments of this kind as they continue to combat opioid and heroin addiction across the nation. Corporations and executives can avoid fines, civil investigations and/or criminal prosecutions by going on the offensive and implementing effective compliance programs designed to prevent criminal behavior and federal law enforcement intervention.

Contacts

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