

# \$145 Million Settlement Shows the Depth of Government's Effort to Combat Opioid Crisis and its Interest in Fraud Actions Against Electronic Health Records Companies

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Less than a year after United States Attorney Christina E. Nolan warned electronic health records (“EHR”) companies [in a DOJ press release](#) that they “should consider themselves on notice” following a \$57.25 million FCA settlement with EHR software developer Greenway Health LLC, the DOJ announced in a recent [press release](#) a \$145 million settlement with another EHR vendor, Practice Fusion, Inc. The settlement includes \$26 million in criminal fines and forfeitures, which Practice Fusion agreed to pay as part of a deferred prosecution agreement. That settlement figure is notable as the largest criminal fine in the District of Vermont’s history. Practice Fusion agreed to pay another \$118.6 million in civil settlement, which includes approximately \$113.4 million to the federal government and up to \$5.2 million to states that opt to participate in separate state agreements.

Practice Fusion, founded in 2005, provided electronic medical record software called Practice Fusion Solution free of charge. Instead of making money through software sales and support, the company supported itself through drug advertising revenues.

The government brought both civil and criminal claims against Practice Fusion. Like the Greenway case, the government alleged Practice Fusion submitted false claims by certifying its EHR software products had specific capabilities when the software apparently did not. The settlement also resolves claims that Practice Fusion violated anti-kickback laws through programs it ran with opioid and other drug manufacturers. According to the [criminal information](#) filed in the District of Vermont by U.S. Attorney Nolan—the same district that filed charges leading to the Greenway settlement—Practice Fusion created pain clinical decision support (“CDS”) alerts that were inconsistent with CDC Guidelines and clinical quality measures. As alleged, these CDS alerts were intended to prompt physicians to prescribe—and therefore increase sales of—extended release opioids in exchange for remuneration from the opioid manufacturer. The extended release opioid CDS alerts began in 2016, even as the opioid crisis was coming to a head and the CDC released guidelines identifying addiction and overdosing as

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concerns with opioid use.

The settlement is noteworthy for several reasons. It resolves the first ever criminal prosecution of an EHR company, according to the press release. It also demonstrates the government's willingness to combat the opioid crisis by targeting entities other than opioid drug manufacturers. In addition, the settlement was the result of charges brought solely by the government without any *qui tam* relators, just like the case in the Greenway settlement, demonstrating the government's willingness to investigate EHR companies on its own initiative. Finally, the settlement clearly emphasizes U.S. Attorney Nolan's prior admonition, "EHR companies should consider themselves on notice."