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Federal Government's Charges against 60 Medical Personnel for Illegal Prescribing and Distributing of Opioids Demonstrates Continued Focus on Compliance throughout Supply-Chain

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by Alissa Smith and Nicole Burgmeier

Today, the Federal Government announced enforcement actions against 60 defendants in eleven federal districts, including 31 doctors, seven pharmacists, eight nurse practitioners, and seven other licensed medical professional for allegedly prescribing and distribution opioids and other dangerous narcotics and for health care fraud schemes. (DOJ Press Release, April 17, 2019). The charges involve over 350,000 controlled substances prescriptions and over 32 million pills. The unsealed indictments against the defendants can be found here.

The enforcement action was led by the Appalachian Regional Prescription Opioid (ARPO) Strike Force. The ARPO Strike Force was formed in December and includes a team of federal agents and prosecutors to combat the opioid epidemic in the worst hit area of the country. The Strike Force analyzed a variety of databases to identify suspicious prescribing activity; investigators then used confidential and undercover agents to document medical professionals' prescribing and dispensing of opioids in exchange for sex and cash. Sari Horwitz & Scott Higham, *Doctors in seven states charged with prescribing pain killers for cash, sex*, Wall St. J. (Apr. 17, 2019, 1:36 PM), https://www.washingtonpost.com/world/national-security/doctors-in-five-states-charged-with-prescribing-pain-killers-for-cash-sex/2019/04/17/7670d20e-607e-11e9-9ff2-abc984dc9eec_story.html?utm_term=.7ae448f3b507.

In one case, a doctor allegedly prescribed combinations of opioids and benzodiazepine, sometimes in exchange for sexual favors; in total, the doctor is alleged to have prescribed approximately 500,000 hydrocodone pills, 300,000 oxycodone pills, 1,500 fentanyl patches and more than 600,000

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benzodiazepine pills. In another case, a pharmacist was charged with allegedly dispensing large amounts of opioids outside the usual scope of professional practice and for no legitimate medical purpose. A dentist was also charged for alleged conduct that included writing prescriptions for opioids that had no legitimate medical purpose, removing teeth unnecessarily, scheduling unnecessary follow-up appointments and incorrect billing practices.

While there has been an intense focus through litigation across the country on the role of manufacturers and distributors in the opioid crisis, recent initiatives have focused on prescribers and dispensers. Since June 2018, over 650 individuals have been excluded from participation in Medicare, Medicaid and all other Federal health care programs for conduct related to opioid diversion and abuse.

For law-abiding prescribers and dispensers, it may be easy to dismiss today's headline news as "not applicable". However, all prescribers and dispensers should take notice of the increased number of investigations against their fellow licensees. The increased scrutiny of providers' opioid prescribing and dispensing across the country could mean that even innocent providers are caught up in an investigation. Federal and state resources are being devoted in record numbers to investigations of prescribers and dispensers. There are regional DEA and DOJ task forces in place, dedicated funding streams for U.S. Attorneys, focused attention by state Medicaid agencies and Medicaid Fraud Control Units, and enforcement actions by state Boards of Medicine and Pharmacy. Cases against prescribers and dispensers are more likely today than in the past to include both civil and criminal penalties related to opioid prescribing and dispensing. As evidenced by today's announcement, the government has become sophisticated in the use of data mining to identify outliers who will be the next targets of government investigations. Outliers in the number and dosages of prescriptions, the numbers of pain patients, the combinations of drugs prescribed, and failure to check and report to state prescription drug monitoring programs or report significant loss or theft to the DEA, can all trigger an investigation. In order to reduce risk of becoming the target of an investigation, prescribers and dispensers of opioids should ensure that they stay abreast of all State specific guidelines and standards of care for prescribing and dispensing opioids; review CMS guidance on opioid prescribing; review CDC Guidelines for prescribing opioids for chronic pain; and utilize their state's prescription drug monitoring programs. Prescribers and dispensers should also focus on appropriate recordkeeping and documentation and inventory counts to reduce theft and unexplained inventory shortages. Dispensers should also ensure they know and verify the prescribers of prescriptions and document how any red flags in opioid prescriptions are resolved.

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