

Counties sue narcotics makers, alleging 'campaign of deception'



Orange County Dist. Atty. Tony Rackauckas calls the lawsuit against painkiller manufacturers “a matter of public protection.” (Irfan Khan / Los Angeles Times)

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MAY 21, 2014, 6:11 PM

Two California counties sued five of the world's largest narcotics manufacturers on Wednesday, accusing the companies of causing the nation's prescription drug epidemic by waging a "campaign of deception" aimed at boosting sales of potent painkillers such as OxyContin.

Officials from Orange and Santa Clara counties — both hit hard by overdose deaths, emergency room visits and escalating medical costs associated with prescription narcotics — contend the drug makers violated California laws against false advertising, unfair business practices and creating a public nuisance.

In sweeping language reminiscent of the legal attack against the tobacco industry, the lawsuit alleges the drug companies have reaped blockbuster profits by manipulating doctors into believing the benefits of narcotic painkillers outweighed the risks, despite "a wealth of scientific evidence to

the contrary." The effort "opened the floodgates" for such drugs and "the result has been catastrophic," the lawsuit contends.

The complaint accuses the companies of encouraging patients, including well-insured veterans and the elderly, to ask their doctors for the painkillers to treat common conditions such as headaches, arthritis and back pain.

The widespread prescribing of narcotics has created "a population of addicts" and triggered a resurgence in the use of heroin, which produces a similar high to opiate-based painkillers, but is cheaper, the suit says.

In Orange County, where the lawsuit alleges there is a painkiller-related death every other day, Dist. Atty. Tony Rackauckas said he decided to pursue the case "as a matter of public protection."

The primary goal, Rackauckas said in an interview, is "to stop the lies about what these drugs do."

The **100-page lawsuit** brought on behalf of the entire state seeks compensation for the damages allegedly caused by the drugs, as well as a court order forcing the companies to forfeit revenue based on the contested marketing campaign.

Named in the suit are: Actavis, Endo Health Solutions Inc., Johnson & Johnson's Janssen Pharmaceuticals, Purdue Pharma, and Teva Pharmaceutical Industries' Cephalon Inc.

"We're committed to responsible promotion, prescribing and use of all our medications," said Robyn Reed Frenze, a spokeswoman for Janssen Pharmaceuticals. She said her company was reviewing the case and had no further comment at this time.

Representatives for the other drug makers either declined to comment or were not immediately available Wednesday afternoon.

Robert Fellmeth, a University of San Diego School of Law professor and former deputy district attorney, says he expects the manufacturers to challenge the counties' authority over federally regulated drugs.

But Fellmeth, who served as an expert witness in the tobacco litigation and helped write the unfair business practices law, says the case is precisely what the statute was designed for.

"California is suffering disproportionately from this problem, so it is appropriate for this state to take up this hammer," he said.

Twenty years ago, the narcotics industry was hemmed in by a small market because the long-held fear of addiction stopped doctors from prescribing powerful painkillers for anything but cancer

pain and end-of-life suffering. To expand their market, the drug companies engaged in a dishonest campaign that "reeducated" doctors and revolutionized the treatment of pain associated with a wider array of ailments, the suit alleges.

All of the painkillers were approved by the U.S. Food and Drug Administration. Those approvals tightly control what the companies can say about the drugs they sell, and require that individual product labels carry warnings about addiction and other serious side effects.

The counties allege in the lawsuit that the drug manufacturers broadly promoted the entire class of narcotic painkillers as safer than they are. The marketing campaign promised unproven benefits — such as improved sleep and quality of life — that went beyond the claims the FDA allowed the companies to make in marketing specific drugs, the suit says.

The companies employed tactics similar to those used by the tobacco industry to "conceal their deceptive marketing and conspiratorial behavior," the suit states.

One such tactic involved the use of leading physicians — known within the companies as "key opinion leaders" — to spread the message to their peers, it says. The drug makers allegedly recruited and paid those physicians to give speeches and write policy papers.

Another marketing ploy was to create and co-opt patient advocacy organizations and medical specialty societies, the suit says. The companies used these front groups to promote narcotic painkillers and to write treatment guidelines that expanded the market, it says.

It was the drug makers' "marketing — and not any medical breakthrough — that rationalized prescribing opioids for chronic pain and opened the floodgates of opioid use and abuse," the suit says.

The companies have continued to promote the use of narcotics for chronic pain even though doing so is "unsupported by competent scientific evidence," the suit contends.

Painkillers are involved in more than 16,000 deaths each year and are responsible for pushing fatal overdoses ahead of traffic accidents as a leading cause of death in the U.S.

This is not the first time drug makers have been accused of fraudulently promoting narcotic painkillers. In 2007, Purdue agreed to pay \$635 million to settle criminal and civil charges by the federal government and several states that it had underplayed OxyContin's addiction risk to persuade doctors to prescribe it.

The counties' suit alleges Purdue, the maker of OxyContin, continued its deceptive marketing even after it pleaded guilty and pledged to stop. The suit cited a 2013 Times' article that revealed Purdue

kept a database of doctors it suspected of recklessly prescribing its drug to addicts and dealers. That program, the suit alleged, was evidence that the company "was aware of, and profited from," the misuse of its popular painkiller.

The manufacturers' deceptive marketing campaign, carried out over 20 years, "deprived California patients and their doctors of the ability to make informed medical decisions and, instead, caused important, sometimes life-or-death decisions to be made based not on science, but on hype," the complaint states.

Over the same period, narcotic prescriptions have soared as doctors often turn to them first — rather than as a last resort — for all types of pain, and keep many patients on them indefinitely. The consequences of this revolution in medical practice have been dire.

A Times investigation published in 2012 found that nearly half of the prescription-drug-involved deaths in Southern California from 2006 through 2011 involved at least one drug prescribed by a doctor.

The Times' **identified 71 Southern California doctors**, including several from Orange County, who prescribed drugs to three or more patients who fatally overdosed.

Rackauckas said he was well aware of the toll prescription narcotic abuse has had in his county, based in part on consultation with the coroner's office. He said the problem stems from the pharmaceutical companies who put profit before patient care.

"In order to put money in their pockets," he said, "they've done serious harm to many thousands of people."

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