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Department of Justice

U.S. Attorney's Office

District of Massachusetts

FOR IMMEDIATE RELEASE

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Founder and Owner of Pharmaceutical Company Insys Arrested and Charged with Racketeering

Defendant and other executives allegedly bribed doctors and pharmacists to prescribe fentanyl spray meant for breakthrough cancer pain

BOSTON – The founder and majority owner of Insys Therapeutics Inc., was arrested today and charged with leading a nationwide conspiracy to profit by using bribes and fraud to cause the illegal distribution of a Fentanyl spray intended for cancer patients experiencing breakthrough pain.

John N. Kapoor, 74, of Phoenix, Ariz., a current member of the Board of Directors of Insys, was arrested this morning in Arizona and charged with RICO conspiracy, as well as other felonies, including conspiracy to commit mail and wire fraud and conspiracy to violate the Anti-Kickback Law. Kapoor, the former Executive Chairman of the Board and CEO of Insys, will appear in federal court in Phoenix today. He will appear in U.S. District Court in Boston at a later date.

The superseding indictment, unsealed today in Boston, also includes additional allegations against several former Insys executives and managers who were initially indicted in December 2016.

The superseding indictment charges that Kapoor; Michael L. Babich, 40, of Scottsdale, Ariz., former CEO and President of the company; Alec Burlakoff, 42, of Charlotte, N.C., former Vice President of Sales; Richard M. Simon, 46, of Seal Beach, Calif., former National Director of Sales; former Regional Sales Directors Sunrise Lee, 36, of Bryant City, Mich., and Joseph A. Rowan, 43, of Panama City, Fla.; and former Vice President of Managed Markets, Michael J. Gurry, 53, of Scottsdale, Ariz., conspired to bribe practitioners in various states, many of whom operated pain clinics, in order to get them to prescribe a fentanyl-based pain medication. The medication, called "Subsys," is a powerful narcotic intended to treat cancer patients suffering intense breakthrough pain. In exchange for bribes and kickbacks, the practitioners wrote large numbers of prescriptions for the patients, most of whom were not diagnosed with cancer.

The indictment also alleges that Kapoor and the six former executives conspired to mislead and defraud health insurance providers who were reluctant to approve payment for the drug when it was prescribed for non-cancer patients. They achieved this goal by setting up the "reimbursement unit," which was dedicated to obtaining prior authorization directly from insurers and pharmacy benefit managers.

“In the midst of a nationwide opioid epidemic that has reached crisis proportions, Mr. Kapoor and his company stand accused of bribing doctors to overprescribe a potent opioid and committing fraud on insurance companies solely for profit,” said Acting United States Attorney William D. Weinreb. “Today’s arrest and charges reflect our ongoing efforts to attack the opioid crisis from all angles. We must hold the industry and its leadership accountable - just as we would the cartels or a street-level drug dealer.”

“As alleged, these executives created a corporate culture at Insys that utilized deception and bribery as an acceptable business practice, deceiving patients, and conspiring with doctors and insurers,” said Harold H. Shaw, Special Agent in Charge of the Federal Bureau of Investigation, Boston Field Division. “The allegations of selling a highly addictive opioid cancer pain drug to patients who did not have cancer, make them no better than street-level drug dealers. Today’s charges mark an important step in holding pharmaceutical executives responsible for their part in the opioid crisis. The FBI will vigorously investigate corrupt organizations with business practices that promote fraud with a total disregard for patient safety.”

“These Insys executives allegedly fueled the opioid epidemic by paying doctors to needlessly prescribe an extremely dangerous and addictive form of fentanyl,” said Phillip Coyne, Special Agent in Charge for the Office of Inspector General of the U.S. Department of Health and Human Services. “Corporate executives intent on illegally driving up profits need to be aware they are now squarely in the sights of law enforcement.”

“As alleged, Insys executives improperly influenced health care providers to prescribe a powerful opioid for patients who did not need it, and without complying with FDA requirements, thus putting patients at risk and contributing to the current opioid crisis,” said Mark A. McCormack, Special Agent in Charge, FDA Office of Criminal Investigations’ Metro Washington Field Office. “Our office will continue to work with our law enforcement partners to pursue and bring to justice those who threaten the public health.”

“Pharmaceutical companies whose products include controlled medications that can lead to addiction and overdose have a special obligation to operate in a trustworthy, transparent manner, because their customers’ health and safety and, indeed, very lives depend on it,” said DEA Special Agent in Charge Michael J. Ferguson. “DEA pledges to work with our law enforcement and regulatory partners nationwide to ensure that rules and regulations under the Controlled Substances Act are followed.”

“Today’s arrest is the result of a joint effort to identify, investigate and prosecute individuals who engage in fraudulent activity and endanger patient health,” stated Special Agent in Charge Leigh-Alistair Barzey, Defense Criminal Investigative Service (DCIS) Northeast Field Office. “DCIS will continue to work with the U.S. Attorney’s Office, District of Massachusetts, and our law enforcement partners, to protect U.S. military members, retirees and their dependents and the integrity of TRICARE, the Defense Department’s healthcare system.”

“As alleged, John Kapoor and other top executives committed fraud, placing profit before patient safety, to sell a highly potent and addictive opioid. EBSA will take every opportunity to work collaboratively with our law enforcement partners in these important investigations to protect participants in private sector health plans and contribute in fighting the opioid epidemic,” said Susan A. Hensley, Regional Director of the U.S. Department of Labor, Employee Benefits Security Administration, Boston Regional Office.

“Once again, the United States Postal Inspection Service is fully committed to protecting our nation’s mail system from criminal misuse,” said Shelly Binkowski, Inspector in Charge of the U.S. Postal Inspection Service. “We are proud to work alongside our law enforcement partners to dismantle high level prescription drug practices which directly contribute to the opioid abuse epidemic. This investigation highlights our commitment to defending our mail system from illegal misuse and ensuring public trust in the mail.”

"We are gratified to have contributed to this investigation and applaud the exceptional work of this investigative team for both protecting patient safety and program costs," said Eileen Neff, Special Agent in Charge of the U.S. Postal Service, Office of Inspector General, Northeast Area Field Office. "Along with our law enforcement partners, the USPSOIG will continue to aggressively investigate those who engage in fraudulent activities intended to defraud federal benefit programs and the Postal Service."

"The U.S. Department of Veterans Affairs, Office of Inspector General will continue to aggressively investigate those that attempt to fraudulently impact programs designed to benefit our veterans and their families," said Donna L. Neves, Special Agent in Charge of the VA OIG Northeast Field Office.

The charges of conspiracy to commit RICO and conspiracy to commit mail and wire fraud each provide for a sentence of no greater than 20 years in prison, three years of supervised release and a fine of \$250,000, or twice the amount of pecuniary gain or loss. The charges of conspiracy to violate the Anti-Kickback Law provide for a sentence of no greater than five years in prison, three years of supervised release and a \$25,000 fine. Sentences are imposed by a federal district court judge based upon the U.S. Sentencing Guidelines and other statutory factors.

The investigation was conducted by a team that included the FBI; HHS-OIG; FDA Office of Criminal Investigations; the Defense Criminal Investigative Service; the Drug Enforcement Administration; the Department of Labor, Employee Benefits Security Administration; the Office of Personnel Management; the U.S. Postal Inspection Service; the U.S. Postal Service Office of Inspector General; and the Department of Veterans Affairs. The U.S. Attorney's Office would like to acknowledge the cooperation and assistance of the U.S. Attorney's Offices around the country engaged in parallel investigations, including the District of Connecticut, Eastern District of Michigan, Southern District of Alabama, Southern District of New York, District of Rhode Island, and the District of New Hampshire. The efforts of the Central District of California and the Justice Department's Civil Fraud Section of the Department of Justice are also greatly appreciated.

Assistant U.S. Attorneys K. Nathaniel Yeager, Chief of Weinreb's Health Care Fraud Unit, and Susan M. Poswistilo, of Weinreb's Civil Division, are prosecuting the case.

The details contained in the charging documents are allegations. The defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt.

Topic(s):

Health Care Fraud

Component(s):

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