



THE UNITED STATES ATTORNEY'S OFFICE
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Department of Justice

U.S. Attorney's Office

District of Massachusetts

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Pharmaceutical Executives Charged in Racketeering Scheme

BOSTON – Several pharmaceutical executives and managers, formerly employed by Insys Therapeutics, Inc., were arrested today on charges that they led a nationwide conspiracy to bribe medical practitioners to unnecessarily prescribe a fentanyl-based pain medication and defraud healthcare insurers.

The indictment alleges that Michael L. Babich, 40, of Scottsdale, Ariz., the 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 episodes of 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 the now former corporate executives charged in the case 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.

"Patient safety is paramount and prescriptions for these highly addictive drugs, especially Fentanyl, which is among the most potent and addictive opioids, should be prescribed without the influence of corporate money," said United States Attorney Carmen M. Ortiz. "I hope that today's charges send a clear message that we will continue to attack the opioid epidemic from all angles, whether it is corporate greed or street level dealing."

"As alleged, top executives of Insys Therapeutics, Inc. paid kickbacks and committed fraud to sell a highly potent and addictive opioid that can lead to abuse and life threatening respiratory depression," said Harold H. Shaw, Special Agent in Charge of the Federal Bureau of Investigation, Boston Field Division. "In doing so, they contributed to the growing opioid epidemic and placed profit before patient safety. These indictments reflect the steadfast commitment of the FBI and our law enforcement partners to confront the opioid epidemic impacting our communities, while bringing to justice those who seek to profit from fraud or other criminal acts."

“We take allegations of paying kickbacks to physicians in exchange for prescribing medically unnecessary painkillers extremely seriously,” said Special Agent in Charge Phillip Coyne of the U.S. Department of Health and Human Services, Office of the Inspector General. “Working closely with our law enforcement partners, we will continue to protect the health of Medicare beneficiaries and the integrity of the nation’s healthcare system.”

The defendants were arrested this morning in their respective states and will appear in U.S. District Court in Boston at a later date. Babich is charged with conspiracy to commit racketeering, conspiracy to commit wire and mail fraud and conspiracy to violate the Anti-Kickback Law; Burlakoff, Simon, Lee and Rowan are charged with RICO conspiracy, mail fraud conspiracy and conspiracy to violate the Anti-Kickback Law; Gurry is charged with RICO conspiracy and wire fraud conspiracy.

The indictment also alleges that the conspiracy to bribe practitioners and to defraud insurers generated substantial profits for the defendants, their company, and for the co-conspirator practitioners.

“Causing the unnecessary use of opioids by current and retired U.S. military service members shows disregard for their health and disrespect for their service to our country,” said Special Agent in Charge Craig Rupert of the Defense Criminal Investigative Service (DCIS), Northeast Field Office. “DCIS will continue to partner with the DOJ and our fellow law enforcement agencies to address conduct such as this and protect America’s Warfighters.”

“EBSA is very pleased to have the opportunity work collaboratively with our law enforcement partners in this important investigation,” said Susan A. Hensley, Regional Director of the U.S. Department of Labor, Employee Benefits Security Administration, Boston Regional Office.

“I commend the exceptional work performed by our criminal investigators and their law enforcement partners,” said Scott Rezendes, Special Agent in Charge of the U.S. Office of Personnel Management, Office of Inspector General, Office of Investigations. “It is utterly unacceptable to risk the safety and well-being of patients in order to increase profits. This office will continue to vigorously pursue any and all cases that may jeopardize the health of Federal employees, annuitants, and their families.”

“U.S. Postal Inspection Service is committed to protecting the nation’s mail system from criminal misuse,” said Shelly Binkowski, Inspector in Charge of the U.S. Postal Inspection Service. “This investigation is an excellent example of a partnership between government agencies working together to dismantle prescription drug practices that directly contribute to the ongoing opioid abuse epidemic.”

“The United States Postal Service, Office of Inspector General will continue to vigorously investigate companies that engage in improper relationships with medical providers for the purpose of increasing market share as alleged in this case,” said Eileen Neff, Special Agent in Charge of the U.S. Postal Service Office of Inspector General. “We thank our law enforcement partners for their help in preventing this type of fraud against the healthcare programs of the American public and the Postal Service.”

“Misrepresenting a patient’s diagnoses and using kickbacks to prescribing doctors to inflate drug sales is fraudulent activity,” said Donna L. Neves, Special Agent in Charge of the U.S. Department of Veterans Affairs, Office of Inspector General, Northeast Field Office. “Targeting veterans’ dependents using CHAMPVA with these type techniques is unacceptable. We are pleased to have contributed to this outstanding multi-agency criminal investigation and will continue to pursue allegations of health care fraud that put our veterans and their families at risk.”

On the charges of conspiracy to commit RICO and conspiracy to commit mail and wire fraud, the charging statute provides 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. On the counts of conspiracy to violate the Anti-Kickback Law, the charging statute provides a sentence of up to five years in prison, three years of

supervised release and a \$25,000 fine. Actual sentences for federal crimes are typically less than the maximum penalties. 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 would like to acknowledge the outstanding cooperation and assistance of the U.S. Attorney's Offices around the country engaged in parallel investigations, including the District of Connecticut; the Eastern District of Michigan; the Southern District of New York; and the Southern District of Alabama. The efforts of the Central District of California and the Civil Fraud Section of the Department of Justice are also greatly appreciated.

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

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

Attachment(s):

[Download Insys Indictment](#)

Topic(s):

Health Care Fraud

Component(s):

[USAO - Massachusetts](#)

Updated December 9, 2016