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An Update on DOJ's Health Care Fraud Enforcement Efforts Targeting the Opioid Crisis

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While the opioid crisis has inspired a wave of [new legislation](#) by Congress, the U.S. Department of Justice (“DOJ”) has continued to increase its own response to the prevalent rate of opioid-related drug crimes with a number of new initiatives. On October 17th, Deputy Attorney General Rod Rosenstein [recently delivered remarks](#) at the America’s Health Insurance Plans 2018 National Conference on Medicaid and highlighted the Department’s continued determination to tackle the opioid crisis. Rosenstein’s remarks reiterated [Attorney General Jeff Sessions’ recent statements](#) on September 25th at the Office of Justice Programs’ National Institute of Justice Opioid Research where Sessions outlined the varying ways in which DOJ’s resources are being devoted to combating the “national public health emergency.” Both remarks demonstrate DOJ’s continued approach in using “every tool” available to increase prosecution of opioid-related crime – including not only traditional criminal prosecutions but also affirmative civil enforcement actions through the “first-ever civil injunctions under the Controlled Substances Act against doctors who allegedly prescribed opioids illegally” in August, while apparently diverting resources away from more traditional [white-collar investigations and prosecutions](#). Rosenstein and Sessions both applauded the success of Operation Synthetic Opioid Surge, which focuses not on prosecuting drug users, but on “vigorously prosecuting” *suppliers* of synthetic opioids, such as fentanyl. Sessions in particular noted that shifting focus from users to suppliers, regardless of the quantity of drugs found at the time of arrest, has succeeded in reducing the amount of overdose deaths in Manatee County, Florida by half since last year. Hoping to replicate these results elsewhere, Sessions touted his placement of ten prosecutors who were sent to ten districts with high rates of drug-related deaths to implement the “no amount too small” strategy for prosecuting synthetic opioid trafficking. Sessions noted that this is in addition to the more than 300 new prosecutors he dispatched around the country, as well as the designation in each of the 93 U.S. Attorney’s Offices of an “Opioid Coordinator,” whose job it to “facilitate intake of cases involving prescription opioids, heroin, and fentanyl; and to convene a task force of federal, state, local, and tribal law enforcement.”

Data analytics continues to be one of the most important tools in the Department’s toolbox. In his remarks, Sessions discussed the implementation of an innovative data analytics program that identifies opioid-related health care fraud in various “hot spot districts” around the country. The “Opioid Fraud and Abuse Detection Unit” mines “federal health care databases” and will help federal prosecutors efficiently identify “suspicious outliers,” such as doctors who prescribe opioids at a higher rate than their peers, doctors whose patients have died within sixty days of receiving an opioid prescription, and pharmacies dispensing a disproportionate amount of opioids. Indeed, in August, DOJ established the nation’s [first opioid-focused Medicare Strike Force](#) in Newark/Philadelphia region.

Rosenstein and Sessions also praised the Department’s overall health care fraud enforcement efforts and accomplishments to date, focusing on their view that “we lost proper emphasis on drug cases under the previous administration.” Rosenstein noted that since January 2017, DOJ “has charged more than 200 doctors and 220



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other medical personnel for opioid-related crimes. The cases involved tens of millions of pills prescribed illegally.”

In a recent case of note, [in a Southern Florida takedown](#) this summer, which was part of the DOJ annual Health Care Fraud Takedown, four individuals were prosecuted in connection with kickbacks received from Smart Lab, LLC (“Smart Lab”), a clinical laboratory in Palm Beach Gardens, Florida, which involved alcohol and drug addiction treatment centers. Last month, Smart Lab, the corporation’s Chief Executive and Chief Operating Officers, as well as the top sales representative [plead guilty](#) to a series of health care fraud and money laundering schemes.

The charges alleged that hoping to monetize from the increased volume of opioid-related health care services, such as confirmatory urinary analysis testing, Smart Lab and its executives entered into employment agreements with “sales representatives” to solicit bodily fluid samples from various substance abuse treatment centers. Smart Lab then conducted expensive confirmatory and medically unnecessary drug testing on the samples and submitted the claim to insurance for reimbursement, including from federal health care programs. In exchange for the referrals, Smart Lab kicked back a portion of the reimbursement to the owners, operators, or clinicians of the substance abuse treatment centers. On November 1st, the two owners of Smart Lab, one of whom was a former pitcher for the Miami Marlins, were [sentenced to 46 and 63 months in prison](#), respectively, for their involvement in the operation, repaid almost \$3.8 million to defrauded insurers and received a total of \$70,000 in fines. Smart Lab, as a corporation, was sentenced to three years’ probation. Smart Lab is just one example of many cases in which the Department is prosecuting both entities and individuals seeking to profit from the opioid crisis.

Beyond just prosecuting suppliers domestically, DOJ is also focusing on sending a strong warning message to foreign synthetic opioid manufacturers. Indeed, the Department indicted two leaders of the Zheng drug trafficking organization this August, after it determined that the company was using shell companies to ship synthetic opioids and fentanyl analogues to over 25 countries and to 37 U.S. states.

In an effort to stop the supply and distribution of all kinds of opioids, DOJ is also focusing on targeting “web-based drug trafficking” of synthetic opioids. Rosenstein applauded the establishment of the Joint Criminal Opioid Darknet Enforcement Team, under which the FBI has “doubled its investment in the fight against online drug trafficking by devoting more than 50 Special Agents, Intelligence Analysts, and professional staff to help disrupt the sale of synthetic opioids.”

Overall, the message from Sessions and Rosenstein is clear: the DOJ is leveraging its resources to focus on opioid-related health care fraud and crimes. Accordingly, we can expect an increased rate of civil and criminal enforcement actions targeting opioids as DOJ continues to devote its focus towards combating the opioid crisis.

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