



It's Not Just the Conviction — It's Also the Consequences

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Attention: top executives in the healthcare industry. Take heed, or you could be forced to seek employment in a different industry, as three former top executives at Purdue Pharma recently found out.

In May 2007, Purdue Frederick, a subsidiary of Purdue Pharma L.P., pleaded guilty to felony misbranding of its painkiller drug, Oxycontin, as part of a settlement with federal prosecutors. The charges were that, over a five-year period, the company knowingly made misleading claims about the addictive nature of Oxycontin by claiming that it was less prone to abuse than similar drugs because it was a long-acting narcotic. The subsidiary was automatically debarred from receiving any new government contracts, but the parent company signed a non-prosecution agreement and paid \$634 million to settle charges against it. It was able to avoid criminal prosecution and thus remain eligible for new government contracts.

Additionally, the U.S. attorney reached a plea deal with the three top executives of Purdue, who all avoided jail time by agreeing to perform community service and to pay substantial penalties. The three executives all pleaded to a criminal misdemeanor, as “responsible corporate officers,” for failing to prevent, detect or correct federal drug violations. Under the responsible corporate officer doctrine, an officer can be held strictly liable for failing to properly exercise authority to detect and prevent the misconduct of his or her subordinates, even if there is no evidence of the officer’s own misconduct. The doctrine creates a duty on an executive to be aware of his subordinates’ activities and to stop any



wrongdoing. With this plea agreement, it seemed as if the three executives might have gotten off with a “slap on the wrist.”

However, after the three executives were convicted, the Department of Health and Human Services debarred them for 20 years from involvement in any federally financed health care program. After a number of administrative appeals, the debarment was reduced to 12 years. Still, the executives appealed to the district court and sought to have the debarment vacated or remanded.

However, on Dec. 13, 2010, U.S. District Judge Ellen Segal Huvelle affirmed the 12-year debarment order. The judge noted that the executives’ guilty plea acknowledged that they were “responsible corporate officers” and that they had the “responsibility and authority either to prevent . . . or to promptly correct” the misleading claims regarding Oxycontin.

Obviously, a 12-year debarment from any federally financed health care program for an executive is effectively a death sentence for future employment in the health care industry. This highlights the severe collateral consequences of any criminal conviction for both companies and individuals who participate in federal procurement programs, as well as the need for corporate executives and their attorneys to understand in advance what the potential fallout can be from a criminal proceeding.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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