

2017

BURR

Alert

White Collar Courier: Delivering News and Providing Guidance in White Collar Matters

By Adam Overstreet

The New Department of Justice Initiative – Aggressively Investigating and Prosecuting Pain Management Practitioners

Part One: DOJ Devotes Resources, Vows to Come After "Pill Mills"

Before joining Burr & Forman, I was a federal prosecutor for a little over a decade focusing on health care fraud and general white collar matters. In that role, I was a member of a prosecution team that secured guilty verdicts in March of this year against two pain management doctors in Mobile, Alabama following a nearly two-month long trial. The doctors were convicted of a litany of felony crimes arising from their operation of a pain management clinic (Physicians Pain Specialists of Alabama or "PPSA"), including conspiracy to violate the anti-racketeering act, conspiracy to violate the Controlled Substances Act, illegal distribution of controlled substances, money laundering, and receipt of illegal kickbacks. The doctors received substantial prison sentences of 20 and 21 years, respectively, forfeited virtually all of their personal assets to the government, and were ordered to pay a \$5 million dollar money judgment – in addition to \$15 million in restitution to various private and public health insurers.

The doctors in the PPSA case were convicted of running what the government calls a "pill mill,"¹ a pain management clinic that allegedly prescribes narcotics for illegitimate purposes. Pain management professionals should be aware that this is just one example of what will likely to be an onslaught of "pill mill" prosecutions by the DOJ during the current administration. In fact, just a few months after the convictions in the PPSA case, Attorney General Jeff Sessions announced a nationwide takedown of 120 doctors, pharmacists, and nurses – dubbed "Operation Pilluted" – who were charged with various federal crimes related to their alleged "unlawful distribution of opioids and other prescription narcotics." In announcing this takedown, Sessions noted that the DOJ would continue to "aggressively pursue corrupt medical professionals," and that "the Department's work is not finished. In fact, it is just beginning."

¹ Despite the phrase's negative connotations, courts freely allow federal prosecutors to use it in their indictments and at trial. See, e.g., *United States v. Caroni*, 2011 WL 4102343, at *4 (N.D. Fla. Sept. 13, 2011) ("[T]he phrase 'pill mill' is not a legal term and, instead, is commonly used by laypeople to describe certain types of pain management clinics. . . . [T]he court finds nothing inappropriate about the phrase 'pill mill.'").



On the heels of that announcement, in August of this year, Sessions heralded a new DOJ pilot program called the “Opioid Fraud and Abuse Detection Unit.” According to Sessions, the unit “will focus specifically on opioid-related health care fraud using data to identify and prosecute individuals that are contributing to the prescription opioid epidemic.” Sessions warned, “If you are a doctor illegally prescribing opioids for profit or a pharmacist letting these pills walk out the door and onto our streets based on prescriptions you know were obtained under false pretenses, we are coming after you.” Sessions explained that the DOJ would be funding and appointing a special federal prosecutor in twelve select districts across the country whose sole purpose will be to prosecute “pill mill” cases.

One of the districts receiving a specially allocated “pill mill” prosecutor is the Northern District of Alabama, in Birmingham. The U.S. Attorney for that district, Jay Town, separately confirmed that the new prosecutor will spend “one hundred percent of their time working these types of cases. . . . What we’re going after are the medical providers who are operating outside the boundaries of the law and the medical practice.” Echoing the Attorney General’s statements, Town vowed, “We’re going to rid the Northern District of these pill mills.”

The DOJ has fired a warning shot that physicians, pharmacists, and other medical professionals involved in the treatment of chronic pain patients will be under intense scrutiny for the foreseeable future. In light of that, and as part of the firm’s efforts to deliver news and provide guidance in these types of cases, Adam Overstreet will be authoring a multi-part series which will address various aspects of “pill mill” prosecutions, including possible repercussions for medical professionals, how these cases are investigated, “red flags” that will draw the attention of government investigators, and safeguards pain management professionals can implement to stay out of the DOJ’s crosshairs.

“***Opioids play a unique role in society. They are widely feared compounds, which are associated with abuse, addiction and the dire consequences of diversion; they are also essential medications, the most effective drugs for the relief of pain and suffering.***”²

Next up: “Part Two – What’s at Stake for Medical Professionals in ‘Pill Mill’ Cases.”

To discuss the information further, please contact:

Adam Overstreet at aoverstreet@burr.com

or the Burr & Forman attorney with whom you regularly work.

² Andrew Rosenblum et al., *Opioids and the Treatment of Chronic Pain; Controversies, Current Status, and Future Directions*, 16 EXPERIMENTAL & CLINICAL PSYCHOPHARMACOLOGY 405 (2008) (citations omitted).