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Opioid Industry Suits are a Misguided Cash Grab Against Politically Unpopular Target

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Prescription opioid manufacturers and distributors are under legal siege. Nearly 2,000 lawsuits from states, municipalities, and hospitals allege that these companies are responsible for the opioid epidemic. Purdue Pharma, which makes Oxycontin, recently settled one such lawsuit for $270 million, but most will continue, with the first trial set for May 28.

These lawsuits rest on the proposition that opioid makers misled doctors, hospitals, and patients about the risk of addiction to prescription opioids, thereby generating a boom in opioid overdoses.

Whether these companies broke the law is for juries to decide. But regardless of the outcome, the opioid epidemic has resulted mainly from the prohibition and regulation of prescription opioids, not excessive prescribing. Current regulations harm millions of patients with severe or chronic pain by limiting their access to opioids.

During the early 1980s, doctors prescribed opioids for short-term pain and for palliative care of terminally ill cancer patients, but rarely for chronic conditions such as back pain, osteoarthritis, or fibromyalgia. In the late 1980s, however, prescribing for chronic and acute pain increased. This change reflected concerns about undertreating pain and new evidence that, under medical supervision, opioids were not unacceptably addictive or dangerous.

Pharmaceutical companies embraced the new medical attitudes and scientific evidence. In doing so, they may have understated the risk of addiction from prescription opioids. Yet the medical literature since the 1980s is clear that the risks of addiction from medical use are low: in published studies, the rate of opioid addiction in chronic pain patients averages less than 8 percent.

Moreover, increased prescribing during the 1990s is not what catalyzed the opioid epidemic.

After Purdue's introduction of OxyContin in 1996, prescribing grew at the same rate as before. Marketing of the drug produced no perceptible change in the non-medical use of narcotics by high school seniors, which had been consistently increasing before 1996. Growth in opioid overdoses actually slowed in the late 1990s.

Further, most overdoses involve illicit opioids, not prescription drugs. Overdoses involving heroin and synthetic opioids such as fentanyl now account for roughly 80% of all opioid overdose deaths, up from 35% in 2011. These drugs have driven an acceleration in opioid overdoses since 2011, even while prescribing has decreased. In 2017 alone, synthetic opioid overdoses increased by 45%, pushing total opioid overdoses to a record high.

So why did overdoses from illicit opioids spike? Because of restrictions on legal access.

Prescription opioids are not bought and sold in the same way as legal goods; consumers can access them only through a doctor's prescription. Other opioids, such as heroin, are illegal for all purposes.

Over the last two decades, policy has consistently reduced access to prescription opioids. Many states have capped legal opioid prescription doses; the federal government limits opioid production and raids pain management facilities deemed to be overprescribing. Recent federal legislation increases monitoring of prescribers and grants funding for organizations and hospitals that attempt to reduce prescribing. These policies have caused doctors to limit prescriptions to doses and durations that are far lower than what many wish to consume.

As a result, people who wish to consume illicit opioids like heroin, or use prescription opioids in greater quantities or for longer than their physicians will prescribe, acquire opioids in underground markets. And black-market or diverted opioids are far more dangerous than their legal market equivalents would be.

In underground markets, consumers cannot easily determine drug potency nor sue for damages from faulty or mislabeled products. Diverted or illicit drugs do not come with warning labels, so users cannot discuss safe use with their physicians. Suppliers cannot attract repeat customers by providing and advertising a reliable product.

Thus prohibition, and other regulations that limit prescription access, generate more overdose deaths.

The reformulation of Oxycontin illustrates this compellingly. In 2010, Purdue Pharma introduced an abuse-deterrent version of OxyContin that made the drug less appealing to opioid abusers. Regulations limiting access to other prescription opioids caused many users to substitute to heroin, leading to an increase in heroin overdoses. And black-market traffickers began spiking heroin with fentanyl, a synthetic opioid 30 to 50 times more potent than heroin, to boost their profits. Current lawsuits may similarly pressure pharmaceutical companies to reformulate their products or cut back on production.

The lawsuits against Purdue and other opioid manufacturers seek to extract money from a politically unpopular, deep-pocketed target. Whether or not the plaintiffs have a case on the merits, the success of these lawsuits will only make the opioid epidemic worse so long as prohibition makes access to legal opioids impossible.

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