



## After New York Sues Opioid Manufacturers, Drug Policy Experts Warn That Legal Action Won't Save Lives

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New York City Mayor Bill de Blasio and Kentucky Attorney General Andy Beshear filed lawsuits last week against several pharmaceutical companies, including Purdue Pharma and McKesson Corporation, that manufacture and distribute opioid pain relievers, alleging that they are getting rich to the tune of \$13 billion annually from an overdose crisis that kills 120 people each day.

“By suing Big Pharma, we will make them pay for the lives they’ve destroyed,” Mayor de Blasio tweeted on January 23. “We’ll force them to change their behavior and stop endangering Americans. This is a health emergency and New York City will hold Big Pharma accountable.” Similarly, Kentucky AG Beshear said his state is suing pharmaceutical companies like McKesson for “knowingly and intentionally” distributing huge quantities of opioids in small Kentucky towns, which he described as “reckless behavior [that] fueled our catastrophic drug epidemic that every community is facing.”

Nearly 200 similar lawsuits have been filed by cities and counties across the country, and they’ve become a relatively easy way for politicians to look like they’re addressing the crisis. But doctors, lawyers, and public health experts interviewed by *In Justice Today* are skeptical that such lawsuits are the best way to improve the conditions of people suffering and dying from addiction.

“In a state or large city like New York, there are a lot of regulatory and legislative levers you could be pulling” to address the overdose crisis, such as expanding access to medication-assisted treatment, says public health lawyer Corey Davis, deputy director at the Network for Public Health Law. “And that could happen much more quickly. Laws and regulations are also enforceable, and a much surer bet than suing a bunch of opioid manufacturers and distributors, hoping at some point you get money.” It could be years before a settlement between states and opioid companies is reached.

While de Blasio supports distributing the overdose-reversal drug naloxone and expanding access to treatment, he also favors a war on drugs approach to the crisis, which advocates say takes

resources away from implementing proven public health solutions. As for Kentucky, the state does not let Medicaid pay for methadone—a substitute drug that has been used since the 1970s to reduce opioid withdrawal symptoms and cravings—resulting in financial barriers that prevent low-income people from receiving addiction treatment.

In a recent paper, “Reducing Harm Through Litigation Against Opioid Manufacturers? Lessons From the Tobacco Wars,” Davis and his colleagues argue that a big cash settlement with opioid companies “would likely not be the most effective solution for reducing future harm to the states’ citizens.” While the 1997 tobacco settlement—known as the Tobacco Master Settlement Agreement—led to some successes, like restrictions on advertising and the launch of public awareness campaigns about the harms of tobacco, it’s unclear whether it achieved its stated goal: reducing smoking rates and improving public health.

Davis and his colleagues contend that it’s more likely that increases in cigarette prices, thanks to higher taxes on the product, caused declines in smoking. Unlike tobacco, opioids are FDA-approved medications that play a vital role in pain management. “These are products that do good,” Dr. Jeff Singer, a surgeon and senior fellow at the Cato Institute, a libertarian think tank, told *In Justice Today*. “They are medications, and a totally different case than tobacco.” Singer says these lawsuits look like grandstanding by politicians “who want to appear to be taking action.”

Another major difference between tobacco companies and pharmaceutical companies is the complicated supply chain. Before pills reach the hands of patients, they must be prescribed by a doctor and then purchased at a pharmacy, often involving an insurance company payment. Those pills arrived at the pharmacies via distribution companies like McKesson, and were manufactured by companies like Purdue. With all of these intermediaries, should companies bear responsibility because some patients die after taking the prescribed drug or divert the medication to the black market?

After all, the vast majority of prescription painkiller deaths involve diverted medication that was used illicitly. Indeed, Singer points out that it’s heroin and illicitly manufactured fentanyl—neither come from a prescription—that are driving the overdose crisis. In 2016, almost three-quarters of overdose deaths in New York City involved heroin or illicit fentanyl. Similarly in Kentucky, over 80 percent of deaths involved heroin or fentanyl during 2016. “Collecting billions from opioid manufacturers isn’t going to stop nonmedical users from doing heroin,” Singer said.

Dr. Stefan Kertesz, a primary care doctor and opioid safety team member at the University of Alabama Birmingham School of Medicine, has a different concern. “If these cases hang on portraying every patient with chronic pain as falling prey to something that’s fundamentally harmful, they will tend to spur a continuing stampede of abandonment of these patients,” he says. “It’s not civilized to traumatize the most disabled people in America in the name of averting a public health crisis. Normally you protect those people.” Kertesz says he’s happy to see corporations punished for law-breaking, but “I don’t know whether that is going to save lives in the coming year.”

While Kertesz worries that the rhetoric against pharmaceutical opioids harms vulnerable patients, he thinks the lawsuits are worth it if settlement money helps local governments recoup spending on efforts like expanding treatment.

Mayor de Blasio is right that the overdose crisis is a health emergency. But state and local officials need to focus on actions they can take now, like hosting supervised injection sites and expanding access to medications that treat opioid addiction. A real, non-carceral, public health strategy must be implemented on opioids—the opposite of de Blasio’s NYPD approach on marijuana. Otherwise, they are repeating the empty gestures of the crack era, when officials offered false promises of solving social problems through the court system and mass incarceration.