Opioid Litigation: Current Cases & Parallels to Tobacco

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Class today:
- Current opioid litigation landscape
- Tobacco litigation of 1990s
- Amicus brief
- Discussion

Current Litigation
- Plaintiffs: cities, counties, and states
  - Seeking compensation for costs associated with the opioid overdose crisis
  - 130 people die per day
  - Defendants: pharmaceutical companies, retailers, and distributors

“Origins of an Epidemic: Purdue Pharma Knew Its Opioids Were Widely Abused”

“Majority Of Americans Say Drug Companies Should Be Held Responsible For Opioid Crisis”

“The Family That Built an Empire of Pain: The Sackler dynasty’s ruthless marketing of painkillers has generated billions of dollars—and millions of addicts”

“Opioid crisis: Sales reps turned blind eye to Tennessee’s pill mills, lawsuit says”

- The line at Dr. Abdelrahman Mohamed’s pain clinic snaked down the hall, out the door and sometimes into the parking lot, full of patients with cash in fists.
- Federal agents knew Mohamed, the owner of Hamblen Neuroscience Center in Morristown, as the ’drive-through doctor’ who signed an average of 60 prewritten prescriptions for pain pills per day. Sales reps for Endo Pharmaceuticals knew him as a Grade A customer and saw nothing wrong.
- When suspicious local pharmacists stopped filling the prescriptions, Mohamed’s Endo rep stepped in to help.
- “This is my top writer,” the rep wrote in an email. “He is having a hard time getting Opana for his current patients and now switching them over to other medications.”

Oklahoma case
- Legal theory: state public nuisance statute
  - OK: drugmakers created a public health crisis through deceptive marketing
  - Def: Products subject to regulation, not responsible for crisis
- Purdue settles for $270 million
- Johnson & Johnson go to trial
  - Verdict - $572 million
Multi-District Litigation (MDL)
- Nearly 2,000 cases
- Northern District of Ohio
- Plaintiffs allege defendants used deceptive marketing, pushed doctors to increase dosages, lax product oversight, ignoring obviously large orders

Purdue settlement: MDL
- "Agreement in principle"
- Settlement terms:
  - Purdue files for bankruptcy
  - Restructured into public benefit trust company
  - New board
  - Permanent marketing restrictions
  - Maybe will donate overdose-reversal drugs and MAT
  - Sacklers contribute at least $3 billion
  - No admission of wrongdoing

MDL Trials
- Motion for recusal
- Bellwether trials

Tobacco Litigation
- Master Settlement Agreement (MSA) in 1998
  - $125 billion to states from 1999 to 2018
  - Marketing and sales restrictions
  - Truth Initiative
  - Document publications

Major lessons from MSA:
1. Direct payments to plaintiffs (states) don’t guarantee spending on public health
2. Be careful with marketing restriction loopholes
3. Foundation and internal document publication works!

Judge Dan Aaron Polster
Wants a settlement to “do something meaningful to abate this crisis” and do more than “moving money around.”
The problem with direct payments

- Expectation: $5 for tobacco education and treatment of tobacco-related illness
- Reality: filling budget gaps, paying tobacco farmers
- Only 2.4% spent on smoking prevention
- Why?
  - Funds from settlement to political entity are received as "general revenue"

A bright spot in the MSA: The Truth Initiative and document publication

- Decline in youth smoking prevalence
- Regulatory reforms

Truth Campaign

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Elements of a successful response

1. Improve access to evidence-based addiction and overdose treatment
2. Improve access to effective pain management
3. Address social and structural determinants
4. Provide full and permanent access to defendants’ internal document

Why is this necessary?

- Complex issue requires surgical approach
- Opioids are an indispensable health care tool
- Limited resources