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Colorado Joins Antitrust Lawsuit Against Generic Drug Makers for Conspiring to Fix Prices, Allocate Markets for More Than 100 Different Generic Drugs

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May 12, 2019 (DENVER, Colo.) — Attorney General Phil Weiser announced today that Colorado has joined 42 states in filing a lawsuit against some of the nation's largest generic drug manufacturers for conspiring to fix prices and thwart competition in a scheme to violate the antitrust laws and harm consumers. Over a number of years, this conspiracy caused price increases for generic drugs that are used to treat common infections and diseases such as cancer, asthma, diabetes and high blood pressure.

The lawsuit

(<https://portal.ct.gov/-/media/AG/Downloads/GDMS%20Complaint%2051019%20FINAL%20REDACTED%20PUBLIC%20VERSION.pdf>)

alleges that Teva Pharmaceuticals, Sandoz, Mylan, Pfizer and 16 other generic drug makers engaged in a coordinated and systematic effort to conspire with each other to fix prices, divide market share and rig bids for more than 100 different generic drugs. The generic drugs at issue span all types and classes—including statins, ace inhibitors, beta blockers, antibiotics, anti-depressants, contraceptives, non-steroidal anti-inflammatory drugs—and treat a range of diseases and conditions from basic infections to diabetes, cancer, epilepsy, multiple sclerosis, HIV, ADHD and more. The conspiracy was wide-ranging and well-orchestrated, characterized by a number of blatant acts to cover up the agreement to limit competition between direct competitors.

The conduct at issue in this case has resulted in billions of dollars of overcharges and has had a significant negative impact on consumers that includes consumers who went without medication because of cost. Between 2013 and 2014, these companies raised drug prices by 448 percent. In some instances, prices skyrocketed over 1,000 percent for drugs such as Fluconazole, which is used to treat fungal infections, and Nadolol, a high-blood pressure medication.

The complaint also names 15 individual senior executive defendants at the heart of the conspiracy who were responsible for sales, marketing, pricing, and operations. These executives met with each other at industry trade shows, professional networking events, dinners, cocktail parties, and golf outings where they allegedly shared pricing information and business plans. By using terms like "fair share," "playing nice in the sandbox," and "responsible competitor," the executives acted to unlawfully discourage competition and raise prices in a flagrant violation of the antitrust laws.

The complaint also alleges that, in many cases, these company insiders knew their conduct was unlawful and usually chose to communicate in person or by cell phone to avoid creating a written record of their illegal conduct. And when there was a written record—including emails and text messages—they often took overt and calculated steps to destroy evidence of those communications.

"Access to quality, affordable health care is a top concern for Coloradans. Many Coloradans are struggling to pay for the prescription drugs they need to treat disease or maintain their health. This complaint presents strong and convincing evidence about how the generic drug industry created and enforced a culture of collusion to perpetrate a multi-billion dollar fraud on consumers. The complaint discusses emails, text messages, telephone records, and accounts of former company insiders that details a multi-year conspiracy to fix prices and divvy up the market share for huge numbers of generic drugs. We must hold these companies accountable for their blatant, anti-competitive behavior," said Attorney General Weiser, who served as a senior antitrust official at the U.S. Justice Department in two administrations. "I have worked on a large number of antitrust cases; this case is breath-taking both on account of its impact on consumers and the brazen conduct undertaken by the defendants."

The drugs mentioned in the lawsuit account for billions of dollars of sales in the United States, and the alleged schemes increased prices affecting the health insurance market, taxpayer-funded healthcare programs like Medicare and Medicaid, and individuals who paid artificially-inflated prices for their prescription drugs. Moreover, many people suffered because they could not afford the inflated prices for prescription drugs. In fact, according to the Colorado Health Institute's **2017 Colorado Health Access Survey**, (<https://www.coloradohealthinstitute.org/blog/more-half-million-coloradans-skip-prescription-medication-because-cost>), more than a half a million Coloradans skipped on filling a prescription that year because they said it cost too much.

The complaint, filed in U.S. District Court for the District of Connecticut, seeks damages, civil penalties and actions by the court to restore competition to the generic drug market.

This is the second complaint filed in an ongoing, expanding investigation into the generic drug industry. The first complaint, still pending in U.S. District Court in the Eastern District of Pennsylvania, was filed in 2016 and now includes 18 corporate defendants, two individual defendants, and 15 generic drugs. Two former executives from Heritage Pharmaceuticals, Jeffery Glazer and Jason Malek, have entered into settlement agreements and are cooperating with the Attorneys General working group in that case.

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Date

May 12th, 2019

Author

Lawrence Pacheco

Attachments

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Office of the Attorney General

Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

P: 720-508-6000
F: 720-508-6030

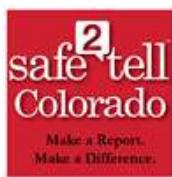
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(mailto:attorney.general@coag.gov)

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