

Attorney General Ellison and Pharmacy Board announce liquidation of opioid manufacturer Insys

Resolves litigation, disciplinary action that Attorney General and Board of Pharmacy filed against Insys, one of two opioid manufacturers AGO has sued

Bipartisan, multistate plan requires public disclosure of Insys's documents, provides monetary relief to states, local governments, and tribes

January 17, 2020 (SAINT PAUL) — Attorney General Keith Ellison and the Minnesota Board of Pharmacy announced today that a federal bankruptcy court has confirmed a bipartisan, multistate plan that liquidates opioid manufacturer Insys Therapeutics, Inc., one of two manufacturers of highly addictive opioids that the Attorney General's Office has sued. The plan requires public disclosure of millions of Insys's internal documents related to its marketing of the opioid Subsys, and provides monetary relief to states, local governments, and tribes.

The Attorney General's Office and the Minnesota Board of Pharmacy filed suit against Insys in Hennepin County District Court in May 2018. The Minnesota Board of Pharmacy concurrently brought a separate disciplinary action before the Office of Administrative Hearings. The lawsuit and the disciplinary action both detailed Insys's use of troubling sales tactics — including sales quotas, cash incentives, and “speaker” payments to high-volume prescribers — to unlawfully promote a fentanyl opioid product for unapproved uses and in large doses that endangered Minnesota patients.

Numerous Insys executives, including its former CEO, were criminally convicted in connection with the company's marketing practices, and the company itself pled guilty to federal charges shortly before filing for bankruptcy in June 2019.

“There's no other way around it: Insys valued its profits over people's lives,” Attorney General Ellison said.

“Minnesotans are safer because it's now gone. Insys illegally marketed an extremely dangerous and addictive opioid and made sham payments to health care professionals to boost its sales.” Attorney General Ellison continued, “This bankruptcy plan puts the company's remaining assets to use in combating the opioid epidemic and compensating those hurt by its misconduct. It also holds the light of day up to Insys's despicable behavior by giving the public access to its internal documents, so everyone can see how it marketed this addictive drug solely to increase its profits,” he added.

“No amount of money can fully compensate states and communities — much less survivors and family members — for the death, damage, and destruction that Insys and other opioid manufacturers have inflicted. Still, a measure of justice has been done with this settlement that permanently shuts down this very bad actor that has irreparably harmed too many Minnesotans,” Attorney General Ellison concluded.

“It is imperative that drugmakers market their products in compliance with the law. Insys promoted a dangerous opioid beyond its approved uses and made improper payments to Minnesota prescribers, putting the public health at risk. By allowing Minnesota to recover from the bankruptcy estate and closing the company’s doors, this agreement protects Minnesotans and makes Insys responsible for its misconduct,” said Dr. Cody Wiberg, Executive Director of the Minnesota Board of Pharmacy.

Insys manufactured the immediate-release fentanyl drug Subsys, which was approved solely for the treatment of excruciating cancer-related pain in opioid-tolerant patients. Fentanyl is an opioid painkiller that is up to 100 times stronger than morphine. Notwithstanding its narrow approval and potential deadliness, Insys promoted Subsys for unapproved, “off-label” uses, seeking to increase profits by marketing to prescribers who did not treat cancer patients and by pushing dangerously high doses. Insys directed its sales representatives to “move in” with one or two high-volume prescribers and offered commissions that rewarded improper prescriptions and higher doses, telling its sales representatives to think of Subsys patients as “annuit[ies] that keep[] paying.” Insys also paid more than \$43,000 to two high-volume Minnesota prescribers for “speaker programs,” in violation of a Minnesota law prohibiting pharmaceutical manufacturers from making payments to health care practitioners of more than \$50 per year.

Key outcomes from the bankruptcy include:

- **Public access to documents.** Insys will make public all of its sales, marketing and compliance documents related to Subsys. This amounts to millions of documents, which will show how Insys planned and executed its marketing of Subsys, how the company improperly targeted and made payments to doctors, and the staggering effects of its marketing in terms of amounts and doses of opioid prescriptions.
- **Monetary recovery.** Minnesota’s recovery will be placed into the state’s opiate epidemic response fund, to be administered by the Opioid Epidemic Response Advisory Council. While the total value of the bankruptcy estate is yet to be determined, the governments and tribes successfully negotiated the largest share of the estate out of all creditor groups. The State of Minnesota’s portion of that share will be worked out amongst the government creditors in the coming months.
- **Restrictions on future Subsys marketing.** The buyer of Subsys, BTcP Pharma, agreed to stringent restrictions on its future marketing of Subsys. It will market Subsys only to cancer patients, and will not operate a speaker program or market to prescribers that do not treat cancer patients.
- **Compensation for injured persons.** The bankruptcy plan protects claims of individual personal injury victims, who have the potential for full recovery from a Victims Restitution Trust.

The Attorney General and the Minnesota Board of Pharmacy joined a bipartisan coalition of state governments, led by the states of Florida, Maryland, New Jersey, and New York, in voting last week to accept the bankruptcy plan, which was negotiated by governments, insurers, hospitals, trade creditors, and personal injury claimants.

Attorney General Ellison will continue to work to hold other opioid companies accountable for the harm they caused. The Attorney General’s Office has a pending lawsuit against Purdue Pharma and its owners, the Sackler family, for their role in fostering and sustaining the opioid epidemic. Purdue Pharma filed for bankruptcy in September 2019, as

Insys earlier did. Attorney General Ellison and a bipartisan coalition of states continue to pursue the action against Purdue in bankruptcy court. The Attorney General's Office is also an active participant in ongoing multistate investigations and negotiations with several other opioid manufacturers and distributors.

Attorney General Ellison supported passage of the state law enacted last year that imposes registration fees on opioid manufacturers and distributors, directs any funds the State recovers from its opioid litigation into a special fund, and creates a council whose purpose is to use those fees to fund opioid education, prevention, treatment, and recovery. Without this bill, proceeds from any opioid settlement would have gone into the General Fund and could have been appropriated for any purpose.

The Attorney General's Office is running a public awareness campaign called "Dose of Reality" to better educate the public about how to safely use, store, and dispose of prescription painkillers. The Dose of Reality website is at doseofreality.mn.gov.