Fact Sheet: The Opioid Overdose Epidemic in the United States

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Updates

The rate of opioid prescribing in the United States has begun to decrease, a positive finding that suggests that healthcare providers have become more cautious in their opioid prescribing practices. Nevertheless, the overall rate of overdose deaths continues to increase, largely driven by heroin and illicitly manufactured fentanyl.¹

- In an analysis released by the CDC in January, 2019, investigators noted a reduction in opioid prescribing from 7.4% of patients to 6.4% after the CDC issued its March 2016 opioid prescribing guidelines.²

- By the latest estimates in December, 2018, 46 people die each day in the United States from overdoses involving prescription opioids.³

Public Health Emergency

On October 26, 2017, President Trump declared a “Public Health Emergency” around the opioid epidemic, a declaration that has been renewed 4 times, most recently on January 19, 2019, for another 3 month period.⁴

- Despite the declaration, the federal government has yet to leverage emergency powers.
  ▪ “[T]he federal government appears to be largely conducting business as usual, neglecting to implement emergency actions to supplement the earlier-enacted 21st Century Cures Act and Combatting Addiction and Recovery Act that have longer-term goals,” note contributors to the Journal of the American Medical Association (JAMA Psychiatry).⁵

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² Ibid.
In the Courts

As the number of lawsuits against manufacturers and distributors of opioid medications continues to mount, many of the most significant events impacting on the epidemic are taking place in the courts.

- To date, more than 1,500 cities, states, local governments and other entities have sued Purdue and other companies that manufacture, distribute, and sell opioids over their roles in the opioid overdose epidemic.  
  o The lawsuits accuse defendants of using false, deceptive, and unfair marketing practices, of playing down the risks of addiction, and of failing to report suspicious orders by consumers that would indicate that drugs were being abused.
  o Complainants includes 41 State Attorneys General, who are filing suits or poised to do so, relying mostly on public-nuisance claims.
  o The plaintiffs seek to halt current marketing and distribution practices, and to recover the costs associated with providing public health services and treatment.

These costs are mounting.

- Nonprofit health research institute Altarum estimates that the cost of the opioid crisis exceeded $1 trillion from 2001 to 2017, and that it will cost an additional $500 billion by 2020.
- Some of the costs of the epidemic are straightforward, such as the work of first responders, the cost of lifesaving treatments such as naloxone, and the expense to Medicaid of prescription opioids themselves.
  o Between 2007 and 2017, the Oklahoma Health Care Authority paid Purdue approximately $50 million for prescription opioids.
  o Other “hidden” costs are also enormously impactful to state budgets.
    o Infants: Intensive care for a newborn who has been harmed by opioids can cost $200,000, even before the baby comes home from the hospital.
    o Foster Care: The number of children in foster care rose nationally by 7% between 2012 and 2016 —largely owing to the opioid-related overdoses of parents. The five states with the highest increases in the foster care system all possessed opioid mortality rates well above the national average.

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10 Massachusetts vs Purdue Pharma, LP. Superior Court, CA. Case No. 1884-cv-01808.
**Infectious Disease:** Rising opioid use has been linked to a spike in new infections of Hepatitis C, which have risen 167% since 2010 after decreasing by 87% from 1992–2009.  

**Criminal Justice:** A CDC study reported that by 2013 the epidemic had generated $7.7 billion in criminal justice related costs borne directly by state and local governments.  

- The state of Oklahoma spends 50% of its annual criminal justice system budget on substance abuse related costs.
- Defendants have claimed that lawsuits seeking compensation for such expenditures lack standing, but judges have thus far upheld the charges as “economic injuries” that were the “direct result of defendants’ creation of an illicit opioid market within their communities,” such as health care and law enforcement expenditures and lost tax revenue.

The most meaningful outcome of this litigation would be the creation of a master settlement similar to the famous tobacco settlement finalized in 1998, which provided states with substantial funds to mobilize public health efforts against the effects of smoking.

Several pending litigation efforts could lead to settlements. The three below are projected to be the most likely.

**Ohio Multidistrict Litigation**

- In late 2017, a judicial panel consolidated over 200 federal lawsuits into a single case, known as a Multidistrict Litigation (MDL), and appointed Judge Dan Aaron Polster of the Northern District of Ohio to preside over it.
  - High-profile defendants include manufacturers such as Johnson & Johnson, Purdue Pharma, Endo Pharmaceuticals, and Teva Pharmaceuticals, distributors such as McKesson, Cardinal Health, Amerisource Bergen, and Anda Pharmaceuticals, and pharmacy chains like Walgreens, Rite Aid, Walmart, and CVS.
  - At the first hearing on January 9, 2018, Judge Polster stated that he hoped to resolve the crisis within one year by reaching a settlement, rather than going to trial.
“What we've got to do is dramatically reduce the number of the pills that are out there and make sure that the pills that are out there are being used properly,” he noted. “We don't need a lot of briefs and we don't need trials... None of those are going to solve what we’ve got.” 

As of January, 2019, the MDL has ballooned to 1,548 federal court cases.

Bellwether Cases
- The settlement talks have thus far been unproductive. In an order issued on April 10, 2018, Judge Polster sought to create a “litigation track” which will bring a series of cases to trial.
  - These cases, known as “bellwether cases,” will test disputed legal theories and facts before live juries. The verdicts obtained will help both sides determine the range of damages and define settlement options, informing whether they decide to return to negotiations or continue litigation in the courtroom.
  - The start date of courtroom proceedings has been delayed twice thus far due to petitions by the defense. The first trial is currently set to begin on October 21, 2019.

More Bellwether Cases
- On December 31, 2018, Judge Polster ordered the creation of a second track of bellwether cases to be heard in West Virginia.
  - These cases emphasize issues of “pill dumping,” and contend that the corporate defendants knowingly flooded the region with opioids well beyond what was necessary to address pain. In so doing, they helped to create dangerous levels of addiction and a new black market.
  - Data released by the DEA under court order bolster this point. A congressional report published by the House Energy and Commerce Committee on December 19, 2018, chronicled unprecedented infusions of opioids into the region.
    - Between 2007 and 2009, H.D. Smith distributed more than 5.65 million doses of hydrocodone to two pharmacies located approximately four blocks apart in Williamson, a town of 3,191 people.
Between December 2007 and April 2009, H.D. Smith provided Sav-Rite No. 1 in Kermit, population 406, with more than 1.48 million doses of hydrocodone and oxycodone.

- In 2017, West Virginia experienced the highest rate of overdose deaths in the nation (52.0 per 100,000).\(^{22}\)

The numerous delays and complications of the MDL have slowed what was intended to be a rapid process of negotiation and settlement. In the meantime, cases in other states are progressing to trial and may reach settlements before the MDL.

**Massachusetts**

- On June 12, 2018, Massachusetts Attorney General Maura Healey launched a suit against Purdue Pharma contending that the company’s directors and CEO “knew about, allowed, and directed” a long-standing deception of prescribers and consumers, downplaying the addiction and health risks of their opioids in order to increase corporate profits.\(^{23}\)
  - **Significance:** This suit seeks accountability not only with Purdue Pharma as a corporate entity, but also among the individuals who helped to map the company’s strategies and then benefitted personally from its profits. Specifically, the suit names 8 members of the Sackler family (a controlling majority of its board) as defendants responsible for controlling Purdue’s misconduct.
    - It alleges: “They directed deceptive sales and marketing practices deep within Purdue, sending hundreds of orders to executives and line employees. From the money that Purdue collected selling opioids, they paid themselves and their families billions of dollars.”\(^{24}\)
  - The suit makes direct reference to the settlement struck between the Justice Department and executives at Purdue Pharma, who pleaded guilty in 2007 to felony charges of illegally misbranding OxyContin in an effort to mislead and defraud physicians and consumers.\(^{25}\)
    - In addition to a fine of $634.5 million, the judgement ordered that Purdue would not “make any written or oral claim that is false, misleading, or deceptive” in the promotion or marketing of its opioids, and that it would implement a detection program to identify doctors who showed signs of inappropriate prescribing.\(^{26}\)


\(^{23}\) Commonwealth of MA vs. Purdue Pharma, LP, et al. Superior Court Civil Action No. 1884-cv-01808, Suffolk County Superior Court. 6/13/18.

\(^{24}\) Commonwealth of MA vs. Purdue Pharma, LP, et al. Superior Court Civil Action No. 1884-cv-01808, Suffolk County Superior Court. 6/13/18.

\(^{25}\) See documents of Attorney John Brownlee on the guilty plea of the Purdue Frederick Company and its executives, 5/10/07.

Purdue agreed to honor its commitment for a 10 year period, from 2007-2017.

- The suit alleges that Purdue violated each of these terms, and that it did so despite regular “warning signs about Purdue’s ongoing misconduct and opportunities to stop it.”

- By addressing such misconduct, the litigation re-opens numerous issues brought under seal in 2007, including a wealth of documentation from that litigation detailing the ways in which makers and distributors of opioids acted in pursuit of profit in disregard to patient welfare. In addition to creating legal liabilities, the exposure of the company’s inner workings is likely to set off a wave of poor public relations.
  - Indeed, Purdue cited confidentiality concerns and redacted 700 sections of an expanded legal complaint lodged by the Massachusetts Attorney General on December 21, 2018.
  - When a federal judge ordered that the unredacted copy be issued, Purdue protested that it would be “irreparably harmed” if the information were released to the public.

- Filing of the unredacted complaint on January 31, 2019, immediately opened the company to public criticism.
  - The complaint quotes from correspondence between Sackler family members and company employees in which family members make damaging statements, seeking out ways to maximize revenues while skirting legal and public health regulations.

  - **Abuse Liability:** In February 1997, a year after the launch of OxyContin, the drug’s inventor, Robert Kaiko, wrote to Richard Sackler that he was “very concerned” about the danger of selling OxyContin without strict controls. Kaiko warned: “I don’t believe we have a sufficiently strong case to argue that OxyContin has minimal or no abuse liability.” To the contrary, Kaiko wrote, “oxycodeone containing products are still among the most abused opioids in the U.S.” Kaiko predicted: “If OxyContin is uncontrolled, ... it is highly likely that it will eventually be abused.”

  - **Unlimited Profits:** At a launch party held in 1996 on the release of OxyContin, Richard Sackler projected that: “the launch of OxyContin Tablets will be followed by a blizzard of prescriptions that will bury

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27 Commonwealth of MA vs. Purdue Pharma, LP, et al. Superior Court Civil Action No. 1884-cv-01808, Suffolk County Superior Court. Filed 6/13/18.
28 Defendants’ Petition to the Single Justice for (1) Stay of Superior Court Order Pending Review by the Single Justice, and (2) Order Vacating the Superior Court Order. Commonwealth of MA vs. Purdue Pharma, LP, et al. Superior Court Civil Action No. 1884-cv-01808, Suffolk County Superior Court. Filed 6/13/18.
29 First Amended Complaint and Jury Demand. Commonwealth of MA vs. Purdue Pharma, LP, et al. Superior Court Civil Action No. 1884-cv-01808, Suffolk County Superior Court. Filed 1/31/19.
31 1997-03-02 email from Richard Sackler, Cited in MA vs. Purdue Pharma (amended) No. 1884-cv-01808.
the competition. The prescription blizzard will be so deep, dense, and white....”

- **Blame of Patients:** In 2000, the Sacklers planned a response to media interest about the abuse of Oxycontin that “deflects attention away from the company owners.” Richard Sackler wrote in a confidential email: “we have to hammer on the abusers in every way possible. They are the culprits and the problem. They are reckless criminals.” When a federal prosecutor reported 59 deaths from OxyContin in a single state, Richard Sackler wrote to Purdue executives: “This is not too bad. It could have been far worse.”

- Release of the unredacted complaint fueled a growing trend by museums, universities, and other nonprofit organizations to examine their policies around accepting Sackler gifts.
  - Activist groups responded to the disclosures by increasing pressure on recipients of Sackler philanthropic giving to reject further funds, and to remove the family’s name from exhibit halls.
  - On February 9, 2019, a group led by photographer Nan Goldin staged a die-in inside the Guggenheim Museum during which members rained leaflets from the building’s ramps into its central lobby, a display resembling a “blizzard of prescriptions.”
  - Together, these pressures have produced a wave of resolutions by arts institutions not to accept donations from the Sackler Trust. These include:
    - London’s National Portrait Gallery (March 19), Britain’s Tate Museums (March 21), and the Solomon R. Guggenheim Museum (March 22).
    - Other institutions reexamining their policies include the Metropolitan Museum of Art, the New York Academy of Science, Yale University, the University of Connecticut, Columbia University, and Tufts University.

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32 Transcript cited in MA vs. Purdue Pharma (amended) No. 1884-cv-01808.
36 Andrew Russeth, “‘They Should Be in Jail’: Nan Goldin, Anti-Sackler Opioid Activists Take Fight to Guggenheim, Met,” *Art News*, 2/10/2019. Goldin, a photographer known among other work for her documentation of the AIDS crisis on Manhattan’s lower east side, became addicted to Oxycontin in 2014 while treating tendinitis of the wrist. “Most of my community was lost to AIDS. I can’t stand by and watch another generation disappear.” Nan Goldin, *ArtForum*, 56(5), January 2018
37 On March 19, 2019, London’s National Portrait Gallery rejected a $1.3 million grant from the Sackler Trust. Two days later, on March 21, Britain’s Tate announced its intention to reject all future donations from the Sacklers. On March 22, 2019, the Guggenheim released a statement announcing that it “does not plan to accept any gifts” from the Sackler family. Alex Marshall, “Museums Cut Ties With Sacklers as Outrage Over Opioid Crisis Grows,” *New York Times*, 3/25/19.
On March 1, 2019, Purdue filed a dismissal motion asking the judge to throw out the suit as a case of “oversimplified scapegoating.” The Attorney General’s Office will oppose the motion.\(^{40}\)

Regardless of whether or when the Massachusetts suit goes to trial, it has already made public far more about the conduct of the pharmaceutical industry than has the MDL under Judge Polster, affecting the climate within which it and other litigation takes place.

### Oklahoma

**NOTE: On Tuesday, March 26, 2019, Purdue Pharma and the Sackler family agreed to pay nearly $275 million to resolve their liability as defendants in this suit.**

- The settlement will prevent public disclosure of any actions Purdue’s may have taken promoting OxyContin to doctors and misrepresenting its addictive properties. It will also prevent members of the Sackler family from personally testifying in the case.
- The settlement with Purdue Pharma does not affect the status of other defendants in the case, including Johnson & Johnson, Cephalon, and Teva Pharmaceuticals. Unless these parties engage in settlements of their own, the case may still proceed to trial.

- **The Oklahoma litigation** alleges that drugmakers “deceived and manipulated Oklahomans” by misrepresenting the addiction risks of their products. It was filed by Attorney General Mike Hunter on June 30, 2017.\(^{41}\)
  - **Significance:**
    - The Oklahoma suit is likely to be the first major litigation to go to trial, and will set the stage for similar suits and for any master settlement reached between the pharmaceutical industry and the states.
      - Presiding Judge Thad Balkman has repeatedly refused to delay the trial, whose date is now set for May 28, 2019.
    - **A matter of Public Interest:** Judge Balkman has also displayed a particular willingness to publicize the details and progress of the trial, which will further expose the inner workings of the companies and their attitudes toward profits and the drug crisis.
      - **Televised Proceedings:** On August 22, 2018, Judge Balkman filed an order ruling that television cameras may be used in the courtroom.
        - “Unquestionably, the issues presented in this matter are of great importance to the citizens of Oklahoma. Therefore, the Court finds that digital video cameras may be present in the courtroom during the trial for this matter ...”\(^{42}\)

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\(^{39}\) “Purdue’s Memorandum of Law in Support of its motion to Dismiss Amended Complaint,” Commonwealth of MA vs. Purdue Pharma, LP, et al. Superior Court Civil Action No. 1884-cv-01808, Suffolk County Superior Court.


\(^{41}\) State of Oklahoma vs. Purdue Pharma LP et al., case number CJ-2017-816, filed 6/30/17.

\(^{42}\) Order. *Oklahoma v Purdue Pharma, L.P.* Case No. CJ- 2017-816, Filed 8/22/18.
Defendants vigorously oppose this measure. 43

**De-designation of “confidential” documents:**

- On Feb 26, 2019, citing “urgent, enduring and overwhelming” public interest, Attorney General Hunter requested the public release of millions of pages of documents improperly submitted as “confidential” by Johnson and Johnson during the discovery phase of the case. 44
  - Judge Balkman has not yet ruled on the request.

- Less than two weeks prior, the Attorney General Hunter had obtained the release of internal documents from Purdue mapping out a disinformation campaign intended to “expose and de-legitimize” the efforts of state Attorneys General who challenged the activities of opioid manufacturers.
  - The campaign was mounted through The Herald Group, a Washington-based public relations firm, which charged $270,000 in return for developing and placing an “anti-story” in outlets such as the *Wall Street Journal* and the *New York Post*. 45
  - “Our goal is to make state attorneys general think twice about joining the litigation,” wrote Matt Well, a founding partner of the Herald Group, in a June, 2017, proposal to Purdue.

**Attempts at postponement:**

- Defendants continue their attempts to postpone the trial. The latest was rejected on March 13, 2019, by the Oklahoma Supreme Court.
  - In a statement, Attorney General Hunter praised the ruling, saying it, "has kept our case on track...Every day the trial is delayed, we will lose more Oklahomans to prescription opioid overdoses." 46

- In early March, 2019, Purdue began to circulate rumors of a possible filing for Chapter 11 bankruptcy. Such a filing has the potential to halt the litigation and compel negotiations of the suits under the supervision of a bankruptcy judge. 47
  - To prevent delays in the overall suit, lawyers in the Attorney General’s office have urged the judge to break the case into separate cases against each of the pharmaceutical

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43 On March 14, 2019, Purdue filed new objections to the presence of cameras. Teva and Jansen joined the motion four days later. Purdue’s Renewed Objection and Motion to Exclude Cameras and Memorandum of Law in Support. State of Oklahoma vs. Purdue Pharma LP et al., case number CJ-2017-816, filed 3/14/19.

44 Motion for De-designation of Alleged Confidential Documents, Oklahoma v Purdue Pharma, L.P. Case No. CJ-2017-816.

45 Exhibits A-F, Attorney General Mike Hunter, Oklahoma


companies so the other cases could continue to go forward if the Purdue case is put on hold. Balkman has requested that attorneys file briefs on the issue.  

- **Purdue Settlement**
  - On Tuesday, March 26, 2019, Purdue reached a settlement of nearly $275 million to resolve its liability in the Oklahoma suit.  
    - The settlement includes $102.5 million to fund a new addiction treatment and research center at Oklahoma State University in Tulsa, and another $20 million to pay for medicine in addiction treatment.
    - Additional money has been allocated to reimburse plaintiffs for litigation costs.
    - The settlement makes no provision, however, for the public health and criminal justice costs of the epidemic which have been thus far born by the state. These include items such as law enforcement, emergency medical responders, social services including foster care for dependents, infectious disease treatment, and other “externalities.”
    - **Significance:** The terms of the settlement may provide a model for other jurisdictions and companies looking to resolve the opioid litigation.

### A Master Settlement

The 1998 Master Settlement Agreement between the tobacco industry and 46 state attorneys general has enormous potential as a model for a similar settlement that could hold opioid manufacturers and distributors accountable.  

- The tobacco industry agreed to pay 46 states $206 billion over 25 years to recover their tobacco-related health care costs.
- The companies agreed to curtail or cease certain tobacco marketing practices, particularly those targeted toward youth.
- The companies released for public scrutiny the internal documents that had been disclosed during the discovery phase of litigation.
- The companies dissolved the tobacco industry groups Tobacco Institute, the Center for Indoor Air Research, and the Council for Tobacco Research.
  - These have parallels in the industry-funded American Pain Foundation, American Academy of Pain Medicine, American Pain Society, American

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Geriatrics Society, American Chronic Pain Association, American Society of Pain Education, and Pain & Policy Studies Group, each of which has been shown to distribute pro-opioid messages paid for by opioid manufacturers.\textsuperscript{52}

- Money from the settlement funded the American Legacy Foundation (now called the Truth Initiative), dedicated to reducing youth smoking and preventing diseases associated with smoking.
  - Between the Foundation’s founding in 1999 and 2018, the rate of teen smoking in the United States dropped from 22\% to 6\%.
  - In June, 2018, the Truth Initiative expanded its online focus to combatting the opioid epidemic, as well.\textsuperscript{53}

**Recommended Analysis:**
Cheryl Healton, “We need a Master Settlement Agreement for the opioid crisis,” *The Hill, 2/23/19.*

\textsuperscript{52} Oklahoma v Purdue Pharma, L.P. Case No. CJ- 2017-816.

\textsuperscript{53} “Expanding our mission with an opioid education and prevention campaign,” Truth Initiative, 6/7/18.