

Attorney General Sessions Announces First Ever Controlled Substances Act Civil Injunctions

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Yesterday in Cleveland, United States Attorney General Jeff Sessions and United States Attorney for the Northern District of Ohio Justin Herdman made several announcements regarding efforts taken by the Justice Department to combat the American opioid crisis - focusing in large part on Ohio, as it is one of the areas of the country hit the hardest in terms of the opioid crisis.^[1] Actions have been taken against doctors and other individuals who are alleged to have been illegally prescribing, distributing and trafficking opioid drugs in Northern Ohio. As part of its ongoing efforts, the Justice Department announced that complaints have been filed against two Ohio doctors that are, according to Sessions, “the first ever civil injunctions under the Controlled Substances Act” based upon evidence indicating the doctors prescribed opioids illegally. Both doctors implicated in the cases are from Northern Ohio: Dr. Michael Tricaso works in Akron and Painsville, while Dr. Gregory J. Gerber is from Sandusky.

Alleged Violations of the Controlled Substances Act

Both Tricaso and Gerber are alleged to have violated the Controlled Substances Act, which prohibits dispensing or prescribing controlled substances without a legitimate medical purpose and outside the usual course of professional practice.^[2]

Tricaso operates the Better Living Clinic in Akron, Ohio. According to the court documents, Tricaso met with a confidential DEA source at a gym where Tricaso promotes his practice. Tricaso is alleged to have sold the DEA source steroids that were Schedule III controlled substances throughout 2018. Then, in June 2018, Tricaso is alleged to have provided the DEA source with Percocet without a prescription in response to the DEA source’s request for a Vicodin prescription. According to the complaint, in June 2018, Tricaso offered to provide 50 Percocet pills for \$500 to the DEA source without a prescription and then write the DEA source a prescription for 20 Percocet pills. Tricaso is further alleged to have met the DEA source a second time on July 18 and sold the DEA source 100 Percocet pills for \$1,000.

Tricaso is also alleged to have prescribed unnecessary controlled substances to another confidential DEA source working with the Cuyahoga Falls Police Department. According to the Justice

Department complaint, Tricaso prescribed this DEA confidential source with testosterone, cypionate, nandrolene decanoate and oxandrolone. Tricaso indicated that the controlled substances would help the DEA confidential source “look good and feel good” according to court documents.

Gerber practices as a solo practitioner, pain management physician in Sandusky, Ohio. According to the complaint, in October 2017, Gerber began to treat an undercover agent working with the State Board of Pharmacy. Although the undercover agent did not complain of any pain, Gerber prescribed oxycodone and continued to do so for seven months, eventually doubling the dosage and strength of the prescription. Gerber is also alleged to have prescribed unnecessary opioids and controlled substances to patients that did not present conditions where long-term prescriptions for opioids would be considered necessary.

In addition to the alleged violations of the Controlled Substances Act, Gerber has been alleged to have violated the Federal False Claims Act. The Justice Department has alleged that Gerber received \$175,000 in kickbacks for promoting Subsys, which is a liquid fentanyl formula spray applied under the tongue to treat cancer pain.

If the temporary restraining orders are granted, both doctors will be prevented from prescribing opioids before a criminal prosecution is initiated. The Justice Department indicated that both investigations are ongoing. The complaints were filed in the U.S. District Court for the Northern District of Ohio.

Additional Justice Department Announcements on Opioid Enforcement

In addition to the complaints against Tricaso and Gerber, Attorney General Sessions announced several Justice Department operations against opioid traffickers in Ohio that have resulted in criminal charges and indictments.

Sessions announced a 43-count indictment against leaders of a Chinese fentanyl trafficking organization identified as the Zheng organization. The Zheng organizations is alleged by Sessions to have distributed more than 250 types of synthetic opioids, manufactured in China, to 37 U.S. states, including Ohio. A man and woman in Ohio, who are alleged to have sold opioids from the Zheng organization, were arrested last April and sentenced to 30 years in prison for selling fentanyl that resulted in the overdose deaths of Akron residents. Sessions has also alleged that the Zheng organization has manufactured counterfeit cancer drugs and Adderall that were actually bath salts.

Sessions also announced the charge and arrest of a husband and wife that operated the “MH4Life” operation that is alleged to be the “most prolific dark web fentanyl vendor in the United States and the fourth most prolific on Earth.” Through “Operation Darkness Falls,” a joint operation by the FBI, the IRS and Homeland Security Investigators, controlled purchases were made from MH4Life on the dark web and coordinated efforts led to identifying packages being received in a San Antonio post office that led to the arrest of the husband and wife. Sessions indicated that Operation Darkness Falls had led to the indictment of at least five others, including what is alleged to be “the third-largest dark net fentanyl vendor in North America at the time of his arrest—a man known online as DF44.”

In addition, a team led by the Northern District of Ohio was successful in indicting a dark web fentanyl dealer running a business out of the Our Lady of the Lake Catholic School in Euclid, Ohio. This fentanyl dealer plead guilty to the charges and he is scheduled for sentencing this fall. Finally, Sessions announced that an Ohio grand jury indicted two fentanyl dealers that sold opioids over the dark web. One of the dealers pled guilty and is anticipated to receive a 10 year sentence.

Justice Department Plans to Combat Opioid Crisis

The investigations and pending actions are result of the Justice Department's mandate to investigate and take action where it is determined that health care providers are violating federal law regarding the dispensing and prescribing of opioids. Ohio has been directly impacted by the opioid crisis, and according to Sessions was second in opioid deaths among U.S. states in 2016, with a death rate nearly double that of the national average. Sessions stated that over the past year 10 more federal prosecutors have been sent to Ohio, which should mean more cases and more convictions to combat the opioid epidemic. Additionally, six months ago, Sessions introduced the Justice Department's Prescription Interdiction & Litigation Task Force which was designed to initiate criminal and civil actions that according to Sessions "will fight the opioid crisis at every level of the supply chain—from manufacturers to distributors to doctors to pharmacies to street dealers and gangs."

Links to the Justice Department Press releases can be found [HERE](#) and [HERE](#).

[1] Session's remarks are available at: <https://www.justice.gov/opa/speech/attorney-general-sessions-makes-multiple-major-announcements-justice-department-continues>.

[2] See, 21 U.S.C. §§ 829(a), (b), 841(a)(1) and 882(a) and 21 C.F.R. § 1306.04.

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