

Fraud and Abuse by Pharmaceutical Companies

A Rising Tax on Our Health Care Dollars

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The cost of prescription medications is the fastest growing component in the health care system. There are myriad reasons for this. More drugs for more diseases have come to market in recent years and consumers have become more savvy about the benefits and availability of drugs (in no small measure because of direct advertising by drug firms to consumers). But there are also other, more troublesome factors driving the cost of drugs.

Recently, two pharmaceutical firms agreed to pay in excess of a \$100,000,000 each to settle allegations that they engaged in illegal tactics to inflate the prices of their drugs. Class-action lawsuits alleging wrongdoing have been filed against other drug companies, and now federal and state law enforcement authorities are investigating scores of other allegations. Even the U.S. House of Representatives has launched an inquiry into charges of drug price manipulation.

All of these cases have given us a glimpse into the incredibly complex and usually secretive system by which pharmaceutical products are tested, manufactured, marketed and paid for. The system that has been revealed is rife with abuse and in need of greater monitoring and reform. It's a system that impacts all of our wallets and occasionally puts our health in jeopardy. Unfortunately, we have only seen the tip of the iceberg.

Pharmaceutical Fraud

One recent case against pharmaceutical giant BASF illustrates the difficulty in calling any drug company to account for its misconduct. BASF subsidiary Knoll Pharmaceutical makes the blockbuster drug Synthroid, which is taken by millions of Americans for the treatment of thyroid disease. Because the FDA has not yet designated any generic equivalent to Synthroid, the makers of the drug have had a virtual monopoly for decades. One factor in the FDA's delay has been the insistence by Synthroid's makers that there is no substitute for their drug.

In the late 1980s, the makers of Synthroid hired a university scientist who discovered the truth. She proved that other, cheaper drugs were equivalent to Synthroid. This news would have dramatic consequences in the scientific community. The Journal of the American Medical Association was set to publish an article breaking the story. But before word could leak out, the makers of Synthroid took swift and decisive action. Realizing that the truth could cost the company hundreds of millions of dollars, the drug maker invoked a secrecy clause in the scientist's contract and threatened lawsuits that could end the scientist's career and cripple her university. The article was pulled.

But the cover-up didn't last forever. Last year, BASF agreed to pay more than \$135 million to consumers, states and private insurers to settle allegations related to the Synthroid scheme. This settlement came after years of contentious litigation. Some of the most bitter disputes in the litigation were among the various groups of plaintiffs. In particular, class action attorneys purporting to represent the insurance industry sought huge fees in the case despite the fact that hundreds of the industry's larger companies had hired their own counsel to investigate and prosecute their claims. The case is now in appeal.

Antitrust Abuses

