

Another Alleged Drug Kickback Scheme

By [THE EDITORIAL BOARD](#) [New York Times](#)

Two federal lawsuits charging a prominent drug company with making fraudulent kickbacks to promote sales of its drugs raise disturbing questions about how to control fraudulent behavior in the pharmaceutical industry, behavior that appears to be on the rise. The company is Novartis Pharmaceuticals, the American subsidiary of a Swiss-based multinational. Novartis denies any wrongdoing and vows to defend itself in court.

Less than three years ago, Novartis settled criminal and civil investigations into whether it had illegally promoted drugs to health care professionals for uses not approved by the Food and Drug Administration. The company was accused of providing illegal kickbacks to doctors through such mechanisms as entertainment, travel, and appointment to advisory boards or speaker programs. It paid \$422.5 million to settle the case and signed a “corporate integrity agreement” to ensure that its promotional functions would comply with a federal anti-kickback statute.

Last week Preet Bharara, the United States attorney for the Southern District of New York, announced the filing of a lawsuit accusing the company of providing even more blatant kickbacks to pharmacies to generate sales of one of its better-selling drugs. The suit charged that Novartis provided illegal rebates and discounts to 20 or more influential pharmacies based on their success in persuading institutions and doctors to switch patients from other drugs to Myfortic, an immune suppressant used to prevent rejection of kidney transplants. (If prosecutors want to send an even stronger message, they should also pursue the corrupt pharmacies, which are suspected of pocketing tens or hundreds of thousands of dollars in illegal kickbacks.)

The federal prosecutors also filed a second suit, charging that Novartis Pharmaceuticals made illegal payments to physicians in the form of honorariums and other benefits to induce them to write prescriptions for various other drugs made by the company. These sound like exactly the kinds of payments that Novartis pledged not to make in the settlement three years ago.

In the suit involving pharmacies, the United States attorney is seeking damages equal to three times the tens of millions of dollars that Medicare and Medicaid paid for Myfortic claims resulting from the kickback scheme. Prosecutors are seeking an additional \$11,000 penalty for each prescription and refill for patients who were switched.

The Novartis case illustrates a much wider problem in the pharmaceutical industry. Public Citizen, an advocacy group for consumers, has tabulated the court judgments against pharmaceutical manufacturers and the major financial settlements between them and federal and state governments over the past two decades. Last year GlaxoSmithKline paid the largest health fraud settlement ever, a hefty \$3 billion, and two other companies paid \$1.5 billion or more.

But these and lesser fines against other companies have not turned the tide against fraud. Stronger remedies are needed, perhaps including higher civil penalties for each fraudulent transaction and criminal prosecutions of the company officials responsible. The government might also consider the exclusion of specific drugs or of the offending company from participation in Medicare and Medicaid after a criminal settlement.