

## Insights

### International Pharmaceutical Company Pleads Guilty in Federal Court to Felony Criminal Charges

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Warner Chilcott USA Sales, LLC, **has agreed to plead guilty** in federal court to felony criminal charges of paying kickbacks to physicians in return for prescribing seven of its drugs. The subsidiary of multibillion-dollar international pharmaceuticals company Allergan, was also accused of manipulating prior authorizations to induce insurance companies to pay for prescriptions of osteoporosis drug Atelvia and making unsubstantiated marketing claims on another medication, Actonel.

The DOJ accused Warner Chilcott management of directing employees to pay physicians to prescribe certain medications, including Asacol, Doryx, Enablex, Estrace, and Loestrin. Warner Chilcott staffers also solicited doctors to attend “Medical Education Events” at pricey restaurants where prosecutors say little education was involved. Many of those same doctors who prescribed Warner Chilcott meds would be hired as “speakers,” but, as alleged by the Department of Justice, few spoke at any engagements. And if these paid spokespersons let their prescription numbers fall, the company would withhold payment until their numbers rose again.

Warner Chilcott will pay a criminal fine of \$22.94 million, plus another \$102.06 million to the federal government and states who made payments through Medicare, Medicaid, and other programs. But this is not the end of the prosecutions. Criminal charges have come down on three former Warner Chilcott district managers who plead guilty or have agreed to plead guilty to conspiracy to commit health care fraud and other charges. And, in a highly touted move, former Warner Chilcott President W. Carl Reichel was arrested in Boston and according to his **indictment**, been charged with conspiring to pay kickbacks to physicians.

One of those physicians caught up in this alleged healthcare fraud is Massachusetts' physician Rita Luthra. She has been **charged** with allegedly accepting free meals and speaker fees from Warner Chilcott in return for prescribing its osteoporosis drugs. According to court documents, from October 2010 through November 2011, Warner Chilcott paid Dr. Luthra \$23,500 to prescribe Actonel and Atelvia.

On thirty-one occasions, a Warner Chilcott sales representative allegedly brought food to Dr. Luthra's medical office for her and her staff, and paid the doctor \$750 to talk for 25-30 minutes over lunch. On another occasion, Warner Chilcott paid to cater a barbeque hosted by Dr. Luthra at her home for friends. The doctor was also paid

\$250 for speaker training, despite the fact that she never spoke to any other physicians. And allegedly during this whole time, Dr. Luthra's prescriptions of Warner Chilcott's meds increased while on the payroll and then declined once payment stopped. If found guilty for violating the Anti-Kickback Statute, Dr. Lothra may serve a sentence of no greater than five years in prison, with three years of supervised release and pay a fine of \$25,000.

Following news of the indictment, U.S. Attorney Carmen M. Ortiz released a statement to the press: "Doctors' medical judgment should be based on what is best for the patient, and not clouded by expensive meals and other pharmaceutical company kickbacks. Pharmaceutical company executives and employees should not be involved with treatment decisions or submissions to a patient's insurance company."

### Takeaway Points

- The Office of Inspector General is cracking down on quid pro quo relationships between physicians and pharmaceutical corporations and is eager to go after both doctors and executives personally.
- The Anti-Kickback Statute can have serious organizational and professional implications for violation of its provisions. A thorough and knowledgeable review of all transactions and relationships can decrease the potential for catastrophic litigation.