

*Health Care Investigations
and Prosecutions*

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*Health Care Investigations
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- ▶ Who are the players?
 - ▶ Law Enforcement: HHS-OIG, FBI, DEA
 - ▶ Prosecutors: State AG, DOJ, Local Prosecutor
 - ▶ Whistleblowers

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DOJ Priorities:

- AAG Criminal Division – Kenneth A. Blanco
 - Medicare Strike Forces model – focusing on "hot spot" cities for billing fraud, e.g., Chicago and Detroit.
 - Use of data analytics to identify "suspicious billing patterns and emerging schemes."
 - "pushing out the data . . . to U.S. Attorney's Offices"

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- "focusing even more attention to other current issues plaguing our country, such as the opioid abuse epidemic."

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July 13, 2017 – AG Sessions announces the "largest health care fraud takedown operation in American history."

- ▶ Charges brought against 412 persons – including 56 doctors
- ▶ 120 charged with opioid-related crimes
 - ▶ 21 U.S.C. § 841 penalizes the unauthorized distribution of controlled substances
 - ▶ *United States v. Moore*, 423 U.S. 122 (1975)
 - ▶ Held: "...registered physicians can be prosecuted under § 841 when their activities fall outside the usual course of professional practice."
 - ▶ Practitioner must take a patient history
 - ▶ Practitioner must examine patient
 - ▶ A Rx for a controlled substance is effective only if it is "issued for a legitimate medical purpose by an individual practitioner in the usual course of his professional practice." 21 C.F.R. § 1306.04(a)
- ▶ Additional charges for health care fraud under 18 U.S.C. § 1347 for billing Medicare for medically unnecessary office visits, treatments and tests

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W.D.K.Y. brought charges against three physicians and their Primary Care LLC.

- Why not Indiana?
- Reckless homicide
- I.C. § 16-42-19-20 penalizes issuing a prescription for other than a legitimate medical purpose
 - ▶ *Alarcon v. State*, 573 N.E.2d 477 (Ind.Ct.App.1991)
 - ▶ Followed *US v. Moore*.
 - ▶ Indiana "Dealing" statutes apply to licensed physicians who write prescriptions for scheduled drugs
 - ▶ A physician that has issued prescriptions without legitimate medical purpose or outside the usual course of his professional practice was sufficiently supported by evidence in narcotics prosecution...

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Friday, September 22, 2017

Department of Justice Awards Nearly \$59 Million to Combat Opioid Epidemic, Fund Drug Courts

-financial assistance to state, local, and tribal governments to create comprehensive diversion and alternatives to incarceration programs

-HHC of Marion County received \$300K for overdose outreach

-Indiana CJI received approximately \$1M for updated technology to link opioid offenders with services and to maintained databases to collect and analyze Rx data

Questions?
