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Berlin's opioid lawsuit filed in federal court

Barbara Tetreault | Aug 22, 2018

BERLIN — Joining other state and local governments across the country, the city last week filed suit against the drug companies and distributors it argues are responsible for the opioid epidemic.

The 284-page lawsuit, filed in U.S. District Court in Concord, charges the drug manufacturers put their desire for profits above the well-being of Berlin residents. As a direct result of the manufacturers' actions, the lawsuit said Berlin spends a substantial amount of funds annually to pay for health care and services, law enforcement, substance abuse treatment and education, and public assistance.

The suit accuses drug manufacturers of marketing opioids for long-term use despite studies that showed a significant risk of addiction and side effects. Prior to the late 1990s, the suit said opioids were known as effective treatment for short-term post surgical and trauma-related pain. To change that perception, the city charges drug companies spent hundreds of millions of dollars on advertising, sales representatives, and misleading studies to convince doctors and patients of the benefits of opioids to treat chronic pain.

"Opioids — once a niche drug — are now the most prescribed class of drugs — more than blood pressure, cholesterol, or anxiety drugs," the suit states. In 2012, opioids generated \$8 billion in revenue for drug companies.

The suit provides some scope of the opioid problem in New Hampshire and Berlin.

- Between October 2014 and September 2015, the suit states over 50 million Schedule II drugs (described as drugs with a high potential for abuse such as fentanyl, cocaine and oxycodone) were distributed in the state. That comes to almost 50 doses for every adult and child in the state during a one-year period.
- In 2016, there were 143 opioid-related emergency room visits in Coos County.
- In 2016, Berlin administered between 26 and 50 doses of Narcan to overdosing residents.
- New Hampshire had 203 drug overdose deaths in 2013 — that number increased to 334 in 2014, and to 422 in 2015.

The suit said the statistics "do not fully communicate the toll of prescription opioid abuse on patients and their families."

While no dollar figure is mentioned in the lawsuit, it points out the city has made significant attempts to fight the epidemic including increased law enforcement, educational and community programs, drug support programs, drug take back programs, addiction programs, and providing Naloxone to police, emergency medical providers and schools.

A recent article by the New York Times reported more than 400 federal lawsuits have been brought the makers or prescription painkillers, companies that distribute them and pharmacy chains by cities and counties across the country. Berlin's lawsuit will be consolidated into one multidistrict case in the U.S. Northern District of Ohio.

The city was approached earlier this year about joining the litigation against the pharmaceutical makers and distributors. At that time, the city council asked Police Chief Peter Morency and the police commission to review the city's options and make a recommendation. The commission

and chief recommended working with the New York legal firm of Napoli Shkolnik and the New Hampshire firm of Nixon, Vogelmann, Slawsky & Simoneau. The legal firms work on a contingency basis, taking a percentage of any settlement.

The city approved the selection and work on the lawsuit has been underway since March.

In deciding to file suit, city officials stressed Berlin is not suing individual doctors or pharmacies. The city's goal, they said, is to change the way pharmaceutical makers and distributors do business.

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