

## Opioid Lawsuit Earns Utah Physicians Large Doses of Bad Publicity



The opioid epidemic continues to rage in this country. According to the U.S.

Centers for Disease Control and Prevention (CDC), 91 Americans die every day from an opioid overdose, both from prescribed opioids as well as heroin. Fatalities stemming from prescribed opioids such as hydrocodone and oxycodone have increased more than fourfold since 1999. Also jumping almost four times since the turn of the millennium is the number of opioid prescriptions written.

And although this is decidedly a national problem, two states in particular — Ohio and Utah — have recently become linked via lawsuit against doctors for minimizing risks associated with prescription opioids.

### Ohio's bigger targets: pharmaceutical companies

[Earlier this month](#), the Ohio Attorney General filed a suit against “a small circle of doctors” that includes University of Utah anesthesiologist Dr. Perry Fine and Salt Lake City pain researcher Dr. Lynn Webster. The state’s ultimate goal is a larger suit against five pharmaceutical companies for a manner of advertising that concealed or minimized the highly addictive nature of drugs like OxyContin; this long-term vision explains why Fine and Webster are not named as defendants for this suit but are included as part of Ohio’s case-in-progress.

The suit accuses drug manufacturers of pushing the opinions of doctors like Fine and Webster who allegedly support wide use of opioids while purportedly downplaying the dangers. The complaint alleges that Fine and Webster and other pro-opioid health professionals were “selected, funded and elevated by [the pharmaceutical companies in question] because their public positions supported the use of opioids to treat chronic pain.”

The state says that the dissemination of statements by such “key opinion leaders” was part of what instigated the opioid epidemic that led to the death of more than 3,000 Ohioans in 2016. Year after year, Ohio suffers one of the highest opioid fatality rates in the country.

### Ohio and Utah share high proportionate rates of opioid tragedies

The CDC reports that between 2013 and 2015, Utah was ranked seventh in the nation for opioid overdose deaths; in 2015, nearly 300 people lost their lives due to prescription opioid overdoses (around six every week). The Utah Department of Health says that Utah loses 24 residents each month because of excessive or misuse of prescription painkillers.

From the 1990s on, both Fine and Webster were considered pain experts, and both were past presidents of the physicians’ group, the American Academy of Pain Medicine. Webster created a tool for risk screening that several states implemented as part of their opioid prescribing guidelines; in 2009, Utah became one of those states when it used the screening tool to tighten its guidelines and cut down on the number of opioid prescriptions being written.

“I have probably, as much as anybody in the country, worked to try and prevent people from harm and all of my educational materials and lectures were about the risk of opioids,” Webster told [The Deseret News](#). He referred to the allegations made by Ohio’s Attorney General as “baseless.”

## Is “pseudo-addiction” a pseudo-reality?

The lawsuit references a 2010 investigation of Webster by the U.S. Drug Enforcement Administration (DEA). Although the DEA ultimately closed the case four years later without leveling charges against Webster, the number of patients in the doctor’s pain clinic at the time who overdosed on opioids was the impetus for the probe.

Additionally, the Ohio lawsuit slams Webster for perpetuating a concept known as “pseudo-addiction,” the belief that behavior or symptoms that appear to be caused by an addiction may actually be signaling that the patient has been under-treated with opioids.

Webster co-wrote a book in 2007 on pain management and avoiding opioid abuse. The book advised that when a patient presented with signs of ostensible addiction, “in most cases” an increase in the drug dosage “should be the clinician’s first response.”

“There certainly was a time we thought we could eliminate pain and provide people a quality of life by giving them whatever we needed to,” Webster said, admitting that the last decade-and-a-half has brought a far deeper understanding of opioid use in general. He also admitted that the idea of pseudo-addiction in itself was often abused and “became an excuse sometimes to provide more medicine.”

## Does enrichment by drug companies condemn the doctors?

At the present time, many drug makers continue to use Webster as a major researcher. In 2015, pharmaceutical companies paid him around \$100,000 for consulting fees and speaking engagements, this according to the Open Payments database.

Fine was a former board member of the now-defunct American Pain Foundation, an organization intended to be a resource for patients suffering from chronic pain. The foundation closed its doors five years ago, following publicity that revealed how much funding was underwritten by opioid manufacturers. Drug companies paid Fine around \$15,000 in 2015 for consulting and speaking engagements.

Ohio is not the only state bringing up Fine and Webster in lawsuits: along with pharmaceutical companies, they are named as defendants in a suit brought by several counties in New York state. And the city of Chicago has brought a similar suit in which the two doctors are only named as opinion leaders.

This blog post is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice. Any individual or entity reading this information should consult an attorney for their particular situation. For more information/questions regarding any legal matters, please email [info@nelsonhardiman.com](mailto:info@nelsonhardiman.com) or call 310.203.2800.