

State Attorneys General Address National Health Crises, One Person at a Time

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Some might have the mistaken impression that State AGs rarely delve into health related cases, believing them to be largely preempted by the FDA. However, these days there is little doubt that the Attorneys General are able to wield their Unfair and Deceptive Trade Practice laws with considerable weight in the health realm. As the Tobacco, Opioids, and now vaping health crises have developed, State AGs have been at the forefront to put a stop to marketing practices and obtain redress for those harms. The past several weeks we have seen interesting State AG developments as they have continued targeting individuals in their health enforcement actions.

On December 9, Massachusetts Attorney General Maura Healey [settled her 2018 lawsuit](#) against e-cigarette company Eonsmoke for \$50 million, having alleged its marketing appealed to youth, downplayed nicotine content, and their websites failed to implement measures to prevent sales to minors. The AG also settled with two individual defendants Gregory Grishayev and Michael Tolmach, who will pay a total of \$750,000 for their roles. Eonsmoke dissolved in 2020, so the settlement's injunction will have the most impact on the pair who will now be required to get FDA authorization and give AG notice prior to selling tobacco products in Massachusetts in the future.

Also on the e-cigarette front, North Carolina Attorney General Josh Stein [has taken action against JUUL's cofounders](#) for their personal involvement in the company's marketing to youth. This new action against James Monsees and Adam Bowen as individuals comes just months after resolving litigation against the company in June for \$40 million. North Carolina is taking advantage of the language of the settlement with JUUL, in which the "Released Parties" are defined as, "each and all of the past and present principals, partners, officers, directors" but excluded individuals who have been named by "Other States" in any pending action. As many states have sued a number of principals who founded and ran JUUL, this left open the ability to seek additional recoveries against such individuals even after settling their earlier litigation. Attorney General Stein in a press conference announcing the suit compared the cofounders' actions to those of the Sackler family, the former owners of Purdue Pharma who were sued in their individual capacity by several AGs.

The Sacklers haven't escaped individual liability either. Despite a resolution through the Purdue bankruptcy that would release the Sacklers from non-criminal liability in exchange for their contribution of \$4.5 billion to the bankruptcy estate, several states appealed the court's confirmation order primarily on the grounds that the bankruptcy of a corporation should not be used to grant non-consensual releases to third parties. Southern District of New York Judge McMahon agreed and [vacated the bankruptcy confirmation order](#) on December 16, after determining the bankruptcy court did not have statutory authority to grant non-consensual non-debtor releases. While this could reopen individual State pursuit of the Sacklers, more appeals will undoubtedly follow her ruling.

While public health cases may be extreme examples due to their impact on citizens, the aggressive pursuit of individuals by AGs is certainly not unique to this area. Whether a company is dissolved, bankrupt, or has even settled with the State, the individual owners or operators may still be in the AGs' crosshairs and in many instances, may be a more important target to ensure long term compliance.

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