

Department of Justice
U.S. Attorney's Office
Office of Public Affairs

FOR IMMEDIATE RELEASE

December 3, 2019

Second Pharmaceutical Company Admits to Price Fixing, Resolves Related False Claims Act Violations

Rising Pharmaceuticals Agrees to Pay Over \$3 Million in Criminal Penalty, Restitution, and Civil Damages

Rising Pharmaceuticals Inc. (Rising), a generic pharmaceutical company headquartered in New Jersey, was charged for conspiring to fix prices and allocate customers for a generic hypertension drug, the Department of Justice announced today.

According to a one-count felony charge filed today in the United States District Court for the Eastern District of Pennsylvania in Philadelphia, from about April 2014 until at least September 2015, Rising participated in a criminal antitrust conspiracy with a competing manufacturer of generic drugs and its executives to fix prices and allocate customers for Benazepril HCTZ, a medicine used to treat hypertension. This charge is the fourth in the Department of Justice's Antitrust Division's ongoing criminal investigation in the generic pharmaceuticals industry; previously, two executives were charged and pleaded guilty to criminal antitrust violations, and a corporation, Heritage Pharmaceuticals Inc., was charged and entered into a deferred prosecution agreement with the Antitrust Division.

Today, the Antitrust Division also announced a deferred prosecution agreement resolving the charge against Rising, under which the company admits that it conspired to fix prices and allocate customers for Benazepril HCTZ. Under the deferred prosecution agreement, Rising agrees that \$1,543,207 is the appropriate amount of restitution it owes to victims of the charged conduct. To account for Rising's separate agreement with the Department's Civil Division, which requires Rising to pay approximately \$1.1 million in civil damages for False Claims Act violations predicated on Rising's antitrust conduct, the deferred prosecution agreement calls for an offset of Rising's restitution, to \$438,066. The agreement also requires Rising to pay a \$1.5 million monetary penalty, reduced from the fine of approximately \$3.6 million called for under the U.S. Sentencing Guidelines,

due to Rising's financial condition and liquidation. Both the deferred prosecution agreement and civil settlement agreement require approval in the bankruptcy court. Once approved, the deferred prosecution agreement will be filed in district court.

In addition, under the deferred prosecution agreement, Rising has agreed to cooperate fully with Antitrust Division's ongoing criminal investigation. To allow Rising to comply with the agreement's terms, the United States will defer prosecuting Rising for three years, or until its ongoing bankruptcy proceedings become final, whichever comes first. The agreement will not be final until accepted by the court.

"Today's charge, like the previous corporate and individual charges announced in this investigation, publicly affirms the Antitrust Division's steadfast commitment to prosecuting the companies and executives who fixed prices of generic pharmaceuticals," said Assistant Attorney General Makan Delrahim of the Department of Justice's Antitrust Division. "Rising and its co-conspirators exploited patients that rely on Benazepril HCTZ as a low-cost alternative to brand-name medications to treat high blood pressure. The deferred prosecution agreement is an important step in restoring integrity to the generics industry. It will require from Rising not only an admission of guilt, a criminal penalty and cooperation in the ongoing investigation, but also restitution to the direct purchasers that bought Benazepril HCTZ at artificially inflated prices."

"The U.S. Postal Service Office of Inspector General appreciates the opportunity to assist in these critical generics industry antitrust investigations," said Special Agent in Charge Scott Pierce. "Aggressively pursuing those companies and executives who foster behavior related to price fixing, bid rigging and market allocation helps to ensure an open process by which generic pharmaceuticals can be competitively priced and sold. Working closely with the Department of Justice and our counterparts at the Federal Bureau of Investigation, the U.S. Postal Service Office of Inspector General stands ready to support these vital efforts going forward."

"The FBI is proud to join our partners in this effort to uncover companies and individuals who attempt to exploit necessary medicines to cheat the economic system and illegally amass wealth," said Timothy R. Slater, Assistant Director in Charge of the FBI's Washington Field Office. "Today's announcement shows the FBI's level of commitment to investigating allegations of antitrust violations and illuminating criminal behavior so that the perpetrators can be held accountable."

The Antitrust Division entered into this deferred prosecution agreement with Rising based on the individual facts and circumstances of this case. Among those facts and circumstances, the agreement specifically identifies the company's substantial and ongoing cooperation with the investigation to date, including its disclosure of information regarding criminal antitrust violations involving drugs other than those identified in the criminal charge and the agreement. According to the agreement,

this cooperation has allowed the United States to advance its investigation into criminal antitrust conspiracies among other manufacturers of generic pharmaceuticals. Other facts and circumstances identified in the agreement include Rising's agreement to pay restitution, and the fact that a conviction (including a guilty plea) would result in substantial delay to Rising's ongoing bankruptcy proceeding and liquidation. The agreement can ensure that Rising is held accountable for its criminal conduct and preserves the United States' ability to prosecute it should material breaches occur.

In a separate civil resolution, Rising has agreed to pay \$1.1 million to resolve allegations under the False Claims Act related to the price-fixing conspiracy. The government alleged that between 2013 and 2016, Rising paid and received remuneration through arrangements on price, supply, and allocation of customers with another pharmaceutical manufacturer for certain generic drugs in violation of the Anti-Kickback Statute, and that its sale of these drugs resulted in claims submitted to the Medicare and Medicaid programs.

"My Office is proud to announce the next civil healthcare fraud settlement with the Antitrust Division and the Civil Division," said William M. McSwain, U.S. Attorney for the Eastern District of Pennsylvania. "We remain focused on price-fixing and market allocation in generic drugs and addressing the impact on federal healthcare programs like Medicare and Medicaid. This resolution with Rising is another important accomplishment in that area, which will only serve to accelerate our ongoing investigation."

"Hypertension medicines are vital for patient health, and engaging in schemes to price fix these generic medicines is illegal and could potentially be dangerous, as some patients may have an inability to pay for the medicines they need," said Maureen R. Dixon, Special Agent in Charge of the Philadelphia Regional Office of the Inspector General, Department of Health and Human Services. "HHS-OIG will continue to work with our law enforcement partners to investigate allegations of companies engaging in actions that put the public and the Medicare program at risk."

The criminal charge is the result of an ongoing federal antitrust investigation into price fixing, bid rigging and other anticompetitive conduct in the generic pharmaceutical industry, which is being conducted by the Antitrust Division with the assistance of the United States Postal Service Office of Inspector General, the FBI's Washington Field Office and the U.S. Attorney's Office for the Eastern District of Pennsylvania. Anyone with information on market allocation, price fixing, bid rigging and other anticompetitive conduct related to the generic pharmaceutical industry should contact the Antitrust Division's Citizen Complaint Center at 1-888-647-3258 or visit www.justice.gov/atr/contact/newcase.html.

The civil settlement was handled by the Civil Division's Commercial Litigation Branch and the U.S. Attorney's Office for the Eastern District of Pennsylvania with support from the Department of Health and Human Services Office of the Inspector General. Except for those facts admitted to in the deferred prosecution agreement, the claims resolved by the civil settlement are allegations only, and there has been no determination of liability.

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