



EHR vendor Practice Fusion agrees to \$145 million settlement to resolve criminal and civil kickback violations

February 4, 2020

On January 27, 2020, the Department of Justice (DOJ) [announced](#) a \$145 million settlement with electronic health record (EHR) vendor Practice Fusion to resolve civil and criminal allegations that it violated the Anti-Kickback Statute (AKS) and False Claims Act. This is the first-ever criminal action against an EHR vendor.

As part of the resolution of the case, Practice Fusion, which is owned by Allscripts, admitted that it conspired with and solicited and received kickbacks from a pharmaceutical company in exchange for utilizing its EHR software to influence physicians using the software to prescribe extended release opioid pain medications without regard for the appropriateness of such prescriptions. According to the DOJ press release:

[Practice Fusion solicited] “sponsorship” payments from pharmaceutical companies, [and in exchange], Practice Fusion allowed the companies to influence the development and implementation of the CDS [clinical decision support] alerts in ways aimed at increasing sales of the companies’ products. Practice Fusion allegedly permitted pharmaceutical companies to participate in designing the CDS alert, including selecting the guidelines



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used to develop the alerts, setting the criteria that would determine when a healthcare provider received an alert, and in some cases, even drafting the language used in the alert itself. The CDS alerts that Practice Fusion agreed to implement did not always reflect accepted medical standards.

The DOJ further noted that “Practice Fusion touted the anticipated financial benefit to the pharmaceutical companies from increased sales of pharmaceutical products that would result from the CDS alerts.”

The initial investigation of Practice Fusion began in March 2017 (before Allscript’s acquisition of Practice Fusion in early 2018) and was an offshoot of the DOJ’s investigation of the [eClinical Works case](#), which involved allegations that eClinical Works falsely obtained certification for its EHR software. The investigation of Practice Fusion then widened, and Allscripts reported receiving a grand jury subpoena in March 2019 related to the certification that Practice Fusion obtained in connection with the Medicare and Medicaid EHR Incentive Program, as well as Practice Fusion’s compliance with the AKS and HIPAA as it relates to certain business practices.

Resolution of the criminal case

The criminal [Information](#) charges Practice Fusion with two felony counts for violating the AKS and for conspiring with its opioid company client to violate the AKS. The resolution of the criminal case included the execution of a [deferred prosecution agreement](#) with the U.S. Attorney’s Office for the District of Vermont in which Practice Fusion [stipulated to certain facts](#) and agreed to pay over \$26 million in criminal fines and forfeiture. In addition, Practice Fusion agreed to:

- cooperate in any ongoing investigations of the kickback arrangement;
- report any evidence of kickback violations by any other EHR vendors;
- make documents relating to its unlawful conduct available to the public through a website;
- retain an independent oversight organization that is required to review and approve any sponsored CDS before Practice Fusion may implement the CDS; and
- create a comprehensive compliance program designed to ensure such abuses are not repeated.

Resolution of the civil case

Practice Fusion also entered into a [settlement agreement](#) with the DOJ and agreed to pay \$118.6 million (approximately \$113.4 million to the federal government and up to \$5.2 million to states that opt to participate in a separate state agreement) to resolve its civil liability arising from:

- falsely representing that its EHR complied with requirements for certification and causing its EHR users to submit false claims for federal EHR incentive payments by misrepresenting the capabilities of its EHR software;
- accepting kickbacks from the pharmaceutical company involved in the

deferred prosecution agreement;

- allegations of kickbacks relating to 13 other CDS arrangements in which Practice Fusion agreed with pharmaceutical companies to implement CDS alerts intended to increase sales of their products; and
- causing the submission of false claims to federal health care programs tainted by the kickback arrangement between Practice Fusion and the pharmaceutical companies.

Key takeaways

Based on Practice Fusion's analysis of the CDS alert at issue in the deferred prosecution agreement (and excluding the CDS alerts for the 13 other pharmaceutical companies referenced in the settlement agreement), that single alert resulted in tens of thousands of additional prescriptions for extended release opioids than likely would have otherwise been prescribed.

Whether you use (or have used) Practice Fusion's EHR or a different company's EHR, it is important to understand that the EHR software and logic used by your organization may be influencing providers' ordering and prescribing decisions. Health care providers should work with their IT staff, appropriate clinical personnel and their EHR vendors to review the logic built into the EHRs, especially any CDS alerts enabled in the EHRs, to ensure they conform with evidence-based medicine and guidelines.