

Viagra federal lawsuits head to Northern District

By Tim O'Connor
Daily Journal Staff Writer

Dozens of federal lawsuits from around the country claiming the maker of erectile dysfunction drug Viagra covered up the little blue pill's reputed connection to increased cancer risk have been rounded up and moved to San Francisco Federal Court.

The U.S. Judicial Panel on Multidistrict Litigation in Washington, D.C. ruled Thursday that the 30 or so cases already pending in 13 federal districts — and any subsequent similar cases that may emerge — would be assigned to U.S. District Judge Richard Seeborg of the Northern District of California. *In re: Viagra (Sildenafil Citrate) Products Liability Litigation*, 16-MD2691, (N.D. Cal., filed April 7, 2016).

"These actions share factual questions arising out of the allegation that Viagra (sildenafil citrate) causes or increases the risk of developing melanoma and that defendant failed to warn consumers and health care providers of the alleged risk," the panel wrote in its ruling. "Additionally, all actions rely principally on the same studies to support their claims. Issues concerning general causation, the background science, regulatory

history, and marketing will be common to all actions."

The first Viagra lawsuit lodged in the Northern District of California was filed Oct. 23 in Oakland federal court by a San Francisco man. Amador Herrera is represented by Rachel B. Abrams and Meghan E. McCormick of Levin Simes LLP. *Herrera v. Pfizer Inc.*, 15-CV4888, (N.D. Cal., filed Oct. 23, 2015).

Levin Simes has been working with other firms from around the country in preparing filings for San Francisco federal court.

"I'd say we're up to about 100 cases now," Abrams said, adding the total number of lawsuits is likely to be "several hundred."

"You're talking about an older and very vulnerable group of people who right now are not aware of the litigation or the risk," she said.

The Herrera lawsuit uses much the same language as almost all the other lawsuits filed against Pfizer alleging a link between Viagra and skin cancer.

"At the time Viagra was formulated and manufactured, Pfizer knew or should have known that the drug posed a significantly heightened risk to users, specifically through the increased likelihood that those users would develop melanoma because of the chemical reactions inherent to the drug's functioning,"

the complaint said.

The lawsuit points to a 2014 study in the *Journal of the American Medical Association* that found among 25,848 study participants those "who had recently used sildenafil exhibited an 84 percent increase in risk of developing or encouraging invasive melanoma."

Pfizer denies the cancer link allegations.

"Pfizer did not oppose the coordination of these cases, as an MDL can ensure greater efficiency and consistency in the legal process. Viagra's safety and efficacy have been studied in 136 clinical trials, and there is no reliable scientific evidence that supports plaintiffs' claims. Pfizer stands behind this important medicine and intends to vigorously defend these lawsuits," the company said in an email statement.

Viagra has been a financial boon to Pfizer, racking up \$1.88 billion in revenues in 2013 alone. Viagra has given Pfizer a 45 percent share of the approximately \$4 billion erectile dysfunction drug market.

The lead attorney for Viagra in the lawsuits, Matthew A. Holian, of DLA Piper, did not respond to requests for comment.

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Leaks will expose tax entities

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He also has would-be clients sign affidavits of solvency stating they are not yet being sued by any government agency, and turns away anyone interested in Lichtenstein or Panama trusts, jurisdictions he considers to have a bad reputation for shielding unreported income.

But former prosecutors and IRS agents agreed that tax evaders will be a low-priority on the Department of Justice's list once the Mosack Fonseca names are published in full.

"The government will look for terror financing first, money laundering from criminals second, politicians, and run all the names against U.S. government databases," said James F. Dowling, former anti-money laundering advisor to the White House Office of National Drug Control Policy and current risk management advisor to non-bank financial institutions like casinos and broker dealers.

Dowling, a special agent with the IRS Criminal Investigation Division for nearly 30 years, anticipates that prosecutions will be years in the future as the agency follows the money trails to prove wrongdoing.

"It's like peeling back an onion," he said, relaying a tale from his undercover days in which drug traf-

fickers flew money to Sacramento, drove it to Nevada, wired the funds to the Isle of Man, then Austria, Turks and Caicos, the Cayman Islands, Costa Rica, and finally back to the U.S. disguised as a loan to be spent domestically.

Just getting information from one locale through a mutual legal enforcement treaty to get to the next may take months, while disguising the money in the first place and sending it around the world takes seconds. "If the Panama Papers list shows the full insider network with organizational charts, that's the absolute jackpot, but law enforcement still has to prove it beyond a reasonable doubt so it's going to be a couple of years down the line," Dowling said.

Clients who know they are on the list still have time to domesticate any unreported foreign income by depositing it into U.S. accounts and back-filing taxes, or by participating in the IRS Offshore Voluntary Disclosure Program, which involves filing reports on the foreign accounts and paying a penalty, but avoiding possible criminal prosecution.

Several attorneys noted wryly off the record that budget cuts to the IRS have resulted in fewer staff to reach for low-hanging fruit —

suggesting that low-profile clients wanting to take the risk may not get caught.

"It's time for attorneys to look at themselves, how they conduct business, and who with," Dowling said. "If they don't self-regulate, this will cause outside regulations to come about."

Several attempts have been made by Congress to subject attorneys to the Bank Secrecy Act, which would require filing reports on any suspicious transactions, foreign entities with U.S. beneficiaries created for a client, and cash payments exceeding a certain threshold.

The American Bar Association has lobbied against such measures successfully so far, but some wonder whether public opinion will shift post-Panama to expand exceptions to the attorney-client privilege.

"CBS's 60 Minutes did an amazing story on money laundering lawyers in February where they caught several big-name attorneys in New York City on camera seemingly willing to help a mythical Nigerian oil minister protect his bribery money from the government," Verdon said.

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