

I support these actions and congratulate those who made them a reality. Moving forward, however, the FTC will need to refocus its efforts on health claims by targeting abuses in the substance use disorder treatment industry, shifting attention toward large businesses, and making more

I am particularly concerned about abusive practices in the for-profit opioid treatment industry and believe this should be a high priority. This industry has grown exponentially by profiting off those suffering from addiction. Many of these outfits use lead generators to steer Americans into high-cost, subpar treatment centers, and some even hire intermediaries called “body brokers” –who collect kickbacks from this harmful practice.⁴

More than two years ago, Congress passed the SUPPORT Patients and Communities Act. Among other provisions, the Act authorized the Commission to seek civil penalties, damages, and other relief against outfits that engage in misconduct related to substance use disorder treatment. The Commission is well positioned to help shut down these abuses if they are not profitable, and hold predatory actors and their enablers to account.

Unfortunately the Commission has brought zero cases under this new authority. While I have supported actions like this one that challenge baseless CBD claims, as well as previous actions charging that pain relief devices and similar products were sold deceptively, I am concerned that we have largely ignored Congressional concerns about unlawful opioid treatment practices. I urge my fellow Commissioners to change our enforcement priorities, especially given our limited resources.

Second, the FTC should focus more of its enforcement efforts on larger firms rather than small businesses. Today’s actions focus on very small players, some of which are defunct. While I appreciate that small businesses can also harm honest competitors and they are often judgment-proof, making it unlikely victims will see any relief, I am confident that FTC staff can successfully challenge powerful well-financed defendants that break the law.

other drug-related overdoses and other concerns during COVID pandemic. AMERICAN MEDICAL ASSOCIATION (last updated on Oct. 31, 2020) <https://www.ama-assn.org/delivering-care/opioids/covid-19-may-be-worsening-opioid-crisis-states-cant-take-action>

⁴ For example, recent reporting describes the “Florida Shuffle” where treatment facilities pay brokers to recruit patients through 12-step meetings, conferences, hotlines, and online groupings leading to serious harm. See German Lopez, She wanted addiction treatment. She ended up in the relapse capital of America (Mar. 2, 2020), <https://www.vox.com/policy-and-politics/2020/3/2/21156327/florida-shuffle-drug-rehab-addiction-treatment-bri-jayne>. See also Letter from Commissioner Chopra to Congress on Deceptive Marketing Practices in the Opioid Addiction Treatment Industry (July 28, 2018) <https://www.ftc.gov/public-statements/2018/07/letter-commissioner-chopra-congress-deceptive-marketing-practices-opioid> (calling on the FTC to do more to tackle this problem).

⁵ Pub. L. No. 115-271 §§ 802-8023 (codified in 15 U.S.C. § 45d) The Act also allows the Commission to prosecute deceptive marketing of opioid treatment products. Notably, a number of respondents in this sweep are alleged to have made claims that CBD could replace OxyContin.

⁶ Given public reports regarding private equity rollups of smaller opioid treatment facilities, the Commission can also examine whether anticompetitive M&A strategies are leading to further patient harm. See Statement of Commissioner Rohit Chopra Regarding Private Equity-Rollups and the Harms of Opioid Treatment to Congress, Comm’n File No. P110014 (July 8, 2020) <https://www.ftc.gov/public-statements/2020/07/statement-commissioner-rohit-chopra-regarding-private-equity-roll-ups-harm>

⁷ Press Release, Fed. Trade Comm’n, Marketers of Pain Relief Device Settle FTC False Advertising Complaint (Mar. 4, 2020) <https://www.ftc.gov/news-events/press-releases/2020/03/marketers-pain-relief-devices-settle-ftc-false-advertising>

⁸ In one of these matters, the respondents are paying nothing.

Finally, the Commission should reduce the prevalence of unlawful health claims by increasing civil penalties under the FTC's Penalty Offense Authority⁹