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Feds Target In-House Lawyer

All in-house lawyers should take note of a recent indictment by the Department of Justice (DOJ). The charges are causing corporate attorneys to rethink the line between advocacy and participation in a potential crime.

On November 8, 2010, the DOJ took the unusual step of indicting a former associate general counsel of major pharmaceutical company GlaxoSmithKline (Glaxo) for obstruction of justice and making false statements. The DOJ has not charged Glaxo,¹ but the indictment arises directly from the attorney's work in representing her employer in responding to a seemingly routine inquiry from the Food and Drug Administration (FDA).²

The detailed indictment charges attorney Lauren Stevens, former in-house counsel at Glaxo, with serious crimes stemming from her involvement in the FDA's investigation into Glaxo's promotion of the drug Wellbutrin. Specifically, the DOJ charges attorney Stevens with six counts, including obstructing an official proceeding, concealing and falsifying documents to influence a federal agency, and making false statements to the FDA.³

The criminal charges come eight years after the FDA initiated an investigation into whether Glaxo was promoting the drug Wellbutrin for off-label purposes.⁴ In October 2002, the FDA sent a letter to Glaxo requesting the company provide materials related to Wellbutrin promotions.⁵ Glaxo put attorney Stevens in charge of the company's response to the FDA's inquiry.⁶

Attorney Stevens collected documents and responded to the FDA's letters. Her involvement in responding to the FDA on behalf of her employer may now put her in jail.

The indictment is based on the work attorney Stevens did on behalf of Glaxo: (1) the conversations attorney Stevens had with the FDA, (2) the letters she wrote to the FDA, and (3) the internal investigation she did into the FDA's allegations.⁷ Specifically, the DOJ alleges that attorney Stevens "signed and sent to the FDA a series of letters, with documents enclosed, in which she made materially false statements and concealed and covered up documents and other evidence that showed the extent" of Glaxo's promotion of Wellbutrin for unapproved uses.⁸

Notably, the indictment includes a charge under 18 U.S.C. § 1519, a 2002 obstruction of justice statute adopted by Congress in response to the Arthur Anderson and Enron indictments. The DOJ recently argued to the Court that this statute requires a lower level of intent than the preexisting obstruction statute, 18 U.S.C. § 1512. Namely, the DOJ argued that it does not have to prove that attorney Stevens specifically intended to break the law but instead merely that she "knowingly act[ed] to prevent evidence from being available in an investigation...."⁹

Attorney Stevens pled not guilty to the charges on November 30, 2010.¹⁰ However, the DOJ is not finished with its charges. In a recent court filing, the DOJ warned that the indictment is "part of a broader, ongoing investigation" into "ongoing, underlying health care fraud."¹¹

In a press release about the indictment, the DOJ made clear that attorneys working in-house are exposed to criminal prosecution for their roles in responding to government investigations. "There is a difference between legal advocacy based on the facts and distorting the facts to cover up the truth," said Carmen Ortiz, U.S. Attorney for the District of Massachusetts.¹² A four-week criminal trial is set for April 2011.¹³

CONTACT US

If you have any questions or would like to discuss a potential or pending investigation, please contact [Edward J. Heath](#), [Craig A. Raabe](#), [Ronald W. Zdrojeski](#), or [Nuala E. Droney](#).

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¹ The indictment does not name or identify Glaxo, but Glaxo has confirmed that attorney Stevens worked for Glaxo before her retirement. "DOJ Indicts Former GlaxoSmithKline Lawyer," CBS News Investigates (Nov. 9, 2010).

² See Indictment, *United States v. Lauren Stevens*, Criminal Action No. RWT-10-0694 (Nov. 8, 2010) (D. Md.) (Docket No. 1).

³ Indictment at 11-18.

⁴ Indictment ¶ 3.

⁵ Indictment ¶ 3.

⁶ Indictment ¶ 4.

⁷ Indictment ¶¶ 12-41.

⁸ Indictment ¶ 25.

⁹ United States' Motion to Preclude at 10-11 (Dec. 1, 2010) (Docket No. 19).

¹⁰ See Initial Appearance (Nov. 20, 2010) (Docket No. 9).

¹¹ United States' Unopposed Motion for Protective Order at 1 (Dec. 3, 2010) (Docket No. 14).

¹² "Pharmaceutical Company Lawyer Charged with Obstruction and Making False Statements,"

Department of Justice Press Release, available at <http://www.justice.gov/opa/pr/2010/November/10-civ-1266.html> (Nov. 9, 2010).

¹³ Order (Dec. 22, 2010) (Docket No. 31),

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