


From: Dustin Pusch [REDACTED] 
Subject: Re: OxyContin reference, NYT, 03/03/2022
Date: June 7, 2023 at 6:45 PM
To: [REDACTED]



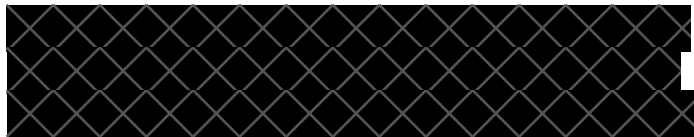
Dear David,

Please see the attached letter from Tom and I concerning the below exchange.

I am available to discuss at your convenience. Thanks in advance for your attention to these issues.

Sincerely,

Dustin A. Pusch | Partner
C L A R E L O C K E L L P



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From: david [REDACTED]
Sent: June 6, 2023 7:25 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: OxyContin reference, NYT, 03/03/2022

Carolyn, hoping you can arrange an independent review within the newsroom of this decision not to correct or at least fix a clear factual error. The backup presented by the reporting team is inaccurate itself, among other deficiencies that are clearly outlined in this email chain.

In the past, The Times has been unwilling to correct errors such as when Michael Barbaro said after publication that he'd been wrong to ignore my protestations and admitted publishing a purely inaccurate article. Here, we have a clear, irrefutable, public factual record -- so this error should not be left to stand, especially now that we've seen another Times reporter inadvertently repeat the original mistake.

Given the institutional reluctance to correct even a demonstrably provable mistake, another option is adjusting the language in the story to conform with the facts, without a formal correction. That is one way to avoid future additional repetitions of a falsehood that appears nowhere else other than The New York Times, because it is untrue.

Thank you, David

From: [REDACTED]
Sent: June 5, 2023 10:22 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: OxyContin reference, NYT, 03/03/2022

Dear Mr. Goldin,

I have reviewed your correspondence with Jan Hoffman and spoken to her at length about this issue. I am satisfied that no change in our story is required.

Hilary Stout
Deputy Health and Science Editor
The New York Times

On Mon, Jun 5, 2023 at 7:59 PM Davidson Goldin [REDACTED] wrote:

Jan, we need look no further than your colleague believing the “market” reference was clearly about prescription opioids generally in order to agree there is a problem here. The goal should be accuracy and clarity for your readers, not searching for language that could justify keeping language that is plainly misleading and factually untrue.

AS described below in the red responses to your data, the article clearly established the market as being prescription opioids that were the subject of lawsuits — and where OxyContin was never by any argument a dominant medicine.

So we respectfully ask for further consideration given the facts do not support what you sent us, which includes demonstrable errors. Thanks. David

1) Though cases have been filed against dozens of companies, Purdue became the target of the earliest and greatest number of lawsuits, because its signature opioid painkiller, OxyContin, **initially dominated the market.**

You clearly define the market in the first sentence as being prescription opioids that would become the subject of lawsuits

Later in the article, there's a reference back to the initial characterization:

2) Though many other opioids soon crowded the market, OxyContin stood out for the no-holds-barred aggressiveness of Purdue's sales force and **the market dominance of the drug.**

Did you intend a different "market dominance" definition here than what you established above?

Based on our reading of the material you offered and our own reporting, it seems that you and we differ over interpretations of "market" and "initially."

There was never, to this day, any point where OxyContin was more than 4% of prescriptions or 16% of MME. Are you disputing that fact?

When OxyContin was introduced in 1996, there were no other comparable long-acting, time-release prescription painkillers, especially any that purported to be non-addicting. Your article defines the market by referencing that "cases have been filed against dozens of companies" -- clearly referencing opioid painkillers generally. Are you suggesting a reasonable reader, or even you, would interpret the plain language of the article to be about the market for long-lasting opioids? Further, if OxyContin was the only product in your well-defined "market" then there would be no market to "dominate" because there would be no competition.

OxyContin was always a Schedule II drug, defined by the DEA as:

"Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence."

Your drug was an astonishing success, eventually earning many billions of dollars. Especially in the first years, before competitors got on the powerful, extended-release pain relief bandwagon, OxyContin initially dominated its own, sui generis pain market. Again, this defies logic. Your article was clearly intended to reference a general market for opioid medications, or you would have written that OxyContin created a new market of some sort.

In a 2002 presentation for Johnson & Johnson for Duragesic, McKinsey consultants, whom you would hire a few years later, said that OxyContin "created" a market.

To reiterate: we wrote that OxyContin was "initially" dominant. "Initially" does not change the error for never dominant.

See, for example, Table 1 in a 2009 study published in the American Journal of Public Health by Dr. Arthur Van Zee entitled: "[The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy.](#)" He cites DEA data from the year **2000** that looked at distribution in grams of OxyContin, Hydrocodone and Oxycodone in 20 counties in Kentucky, West Virginia and Virginia. OxyContin, an exponentially stronger pain pill than the other two, dominated in almost all those counties.

What does a study in 20 counties out of thousands in the US, whether accurate or not, have to do with the national market you are clearly referencing?

The Washington Post article referred to by my colleague, Lauren Hirsch, says the dominance of OxyContin (68 percent) was apparent in 2002. While that article notes that by 2006 it was overtaken by generics and other branded drugs, we pointedly used

that by 2002 it was overtaken by generics and other branded drugs, its position about the word "initially" .

Believe your assertion is incorrect. and Lauren was referencing a single study without any attribution, which in any event is belied by reporting in both the ProPublica and Wall Street Journal articles you reference below saying 27% of MME. In any event, oxycodone medications in their entirety were never a majority of the opioid market (always exceeded by hydrocodone, for example). Also don't believe you intend to suggesting there ever a time, before or after 2002, when generics did not exceed OxyContin?

The 4 percent market share you cite depends on which metrics are used.

Should the metrics be number of prescriptions? Number of pills? Dose strength? Dose duration? Revenue?

You chose the word and, as noted above, used "dominant" in the context of lawsuits against the opioid medication industry. No one other than you suggests OxyContin was the "dominant" opioid medication.

[A 2019 analysis in ProPublica](#) in conjunction with STAT addresses the question of metrics head on. Entitled, "Data by OxyContin Maker to Fight Lawsuits Doesn't Tell the Whole Story," the reporters looked at potency, finding that even in a later period, from 2006 to 2012 in Massachusetts, when potency--the quantity of opioids in a pill-- was figured in, OxyContin accounted for more than 20 percent of the market share. Quoting the DEA's National Drug Threat Assessment, the reporters note that until 2010, OxyContin was "by far" the most commonly abused prescription painkiller in the country. As noted above, the accurate MME # is 16% but even 20% would not be dominant. And this disproves your assertion about 68% above.

[A 2019 analysis in the Wall Street Journal](#), using similar metrics, also refuted the notion that OxyContin and Purdue were small players. Again, even looking at 2006 to 2012 period, later than one would consider "initially," the Journal argued that by opioid potency, Oxycontin was responsible for 27 percent of the market shares...far greater than the 4 percent figure Purdue used to cite from IQVIA.

No one ever suggested the 4% (pills) was about MME (oxycodone ingredient) and also this article was looking at oxycodone medicines, which are described above in terms of their market share. And this disproves your assertion about 68% above.

That figure, echoed in the charts and bar graphs you provided (one of which begins in 1992, years before OxyContin was introduced, and continues through 2018, long past "initially") puts OxyContin in the same category as generic prescription opioids of very different, usually lesser strengths and duration, including low-dose Tylenol-Codeine.

Are you suggesting there is anything in that chart that is not considered by the US Government to be part of the prescription opioid market?

From: [REDACTED]

Sent: June 5, 2023 5:05 PM

To: [REDACTED]

Subject: OxyContin reference, NYT, 03/03/2022

Dear Mr. Goldin et al:

Apologies for the delay in a considered response: we were consumed with the latest Purdue news and then a family death took precedence.

We have now reviewed the material you sent as well as our own reporting for an article that ran in [The New York Times on March 3, 2022](#).

Respectfully, we stand by our reporting.

The phrases, in context, are:

1) Though cases have been filed against dozens of companies, Purdue became the target of the earliest and greatest number of lawsuits, because its signature opioid painkiller, OxyContin, **initially dominated the market**.

Later in the article, there's a reference back to the initial characterization:

2) Though many other opioids soon crowded the market, OxyContin stood out for the no-holds-barred aggressiveness of Purdue's sales force and **the market dominance of the drug**.

Based on our reading of the material you offered and our own reporting, it seems that you and we differ over interpretations of "market" and "initially."

When OxyContin was introduced in 1996, there were no other comparable long-acting, time-release prescription painkillers, especially any that purported to be non-addicting.

Your drug was an astonishing success, eventually earning many billions of dollars. Especially in the first years, before competitors got on the powerful, extended-release pain relief bandwagon, OxyContin initially dominated its own, sui generis pain market.

In a 2002 presentation for Johnson & Johnson for Duragesic, McKinsey consultants, whom you would hire a few years later, said that OxyContin "created" a market.

To reiterate: we wrote that OxyContin was "initially" dominant.

See, for example, Table 1 in a 2009 study published in the American Journal of Public Health by Dr. Arthur Van Zee entitled: ["The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy."](#) He cites DEA data from the year **2000** that looked at distribution in grams of OxyContin, Hydrocodone and Oxycodone in 20 counties in Kentucky, West Virginia and Virginia. OxyContin, an exponentially stronger pain pill than the other two, dominated in almost all those counties.

The Washington Post article referred to by my colleague, Lauren Hirsch, says the dominance of OxyContin (68 percent) was apparent in 2002. While that article notes that by 2006 it was overtaken by generics and other branded drugs, we pointedly used the word "initially" .

The 4 percent market share you cite depends on which metrics are used.

Should the metrics be number of prescriptions? Number of pills? Dose strength? Dose duration? Revenue?

[A 2019 analysis in ProPublica](#) in conjunction with STAT addresses the question of metrics head on. Entitled, "Data by OxyContin Maker to Fight Lawsuits Doesn't Tell the

Whole Story," the reporters looked at potency , finding that even in a later period, from 2006 to 2012 in Massachusetts, when potency--the quantity of opioids in a pill-- was figured in, OxyContin accounted for more than 20 percent of the market share. Quoting the DEA's National Drug Threat Assessment, the reporters note that until 2010, OxyContin was "by far" the most commonly abused prescription painkiller in the country.

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That figure, echoed in the charts and bar graphs you provided (one of which begins in 1992, years before OxyContin was introduced , and continues through 2018, long past "initially") puts OxyContin in the same category as generic prescription opioids of very different, usually lesser strengths and duration, including low-dose Tylenol-Codeine.

Respectfully, we stand by our reporting.

Jan Hoffman

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