

Martin Shkreli Subpoenas Former Lawyers

By Amanda Bradley, J.D. Candidate 2017 | November 22, 2016

Martin Shkreli, the former hedge fund manager and founder of Retrophin and Turing Pharmaceuticals – most famous for engineering, and defending, the drastic overnight [price increase](#) of Daraprim – appears to be gearing up for another fight. This time, the fight is against his former lawyers. The suit arises from fraud charges filed by the Department of Justice after Mr. Shkreli’s price-altering program made national headlines.

On December 17, 2015, [Mr. Shkreli was indicted](#) for allegedly defrauding investors in his hedge funds and misappropriating Retrophin’s assets. Among the charges, the Government alleges that Mr. Shkreli ran Retrophin as a Ponzi scheme, using the assets of the company to pay off personal and unrelated professional debts. Mr. Shkreli recently [sought a court order subpoenaing](#) his former law firm for 600,000 pages of material. Invoking the “advice of counsel” defense, he argues the evidence in the documents will clear him of the charges against him by proving he sought and received his lawyers’ legal advice, and followed it.

A successful advice of counsel defense requires the defendant to [demonstrate](#): 1) the advisee followed the advice of his attorney without variation; 2) the advice given by the attorney was correct; 3) the attorney is qualified and competent. [To prove his defense](#), Mr. Shkreli will need to demonstrate that he sought advice before any action was taken, and that advice was sought before Mr. Shkreli identified any “gray areas” in his business practice. Any delay in seeking advice may be used by prosecutors as evidence that Mr. Shkreli was consciously avoiding obtaining accurate advice about the legality of his conduct.

Several factors may complicate Mr. Shkreli’s ability to effectively assert this defense. First, the DOJ asserts that Mr. Shkreli’s illegal conduct occurred on numerous occasions throughout a 6-year period. This means he may need to prove reliance on counsel’s advice at more than one juncture of the firm’s representation. In addition, [Mr. Shkreli’s attorney was also charged with fraud](#) in two of the transactions involving Retrophin. This may inhibit Mr. Shkreli’s ability to show that the advice given by his attorney was correct.