

# Judge Dismisses Lawsuit Against FDA Over Ivermectin, Doctors Appeal



A lawsuit against the U.S. Food and Drug Administration (FDA) over ivermectin filed by three COVID doctors was dismissed last week due to the government's claim of sovereign immunity. Plaintiffs alleged the agency violated the Federal Food, Drug and Cosmetic Act by warning against using ivermectin, which interfered with their ability to practice medicine and obtain prescriptions for their patients.

Plaintiffs Dr. Mary Talley Bowden, Dr. Paul Marik and Dr. Robert Apter filed an appeal on Friday after U.S. District Judge Jeffrey Brown, in a [20-page ruling](#), said the FDA [cannot be sued](#) for recommending against using ivermectin to treat COVID-19 and concluded the doctors did not “allege facts that overcome the defendants’ assertion of sovereign immunity.”

“First, while § 396 limits the FDA’s powers as applied to medical devices, it does not do so in the context of drugs. As there is no statute limiting the FDA’s actions here, it cannot

have acted outside of any statutory limitations,” Brown said. “Further, it cannot be said that the FDA had no colorable basis of authority. Congress charges the FDA with protecting public health and ensuring that regulated medical products are safe and effective, among other things,” he added.

The government filed a motion to [dismiss the lawsuit](#) in September because the physicians failed to trace their injuries to government officials, including the FDA.

Plaintiffs argued in their complaint the FDA took unlawful “formal, unequivocal and conclusory actions to prohibit or otherwise interfere with the use of ivermectin to treat COVID-19,” and that the agency’s remarks led to adverse action against them.

The government also said that plaintiffs had not proven the statements were a final agency action because the FDA’s position could be updated in the future.

Plaintiffs [pointed to six FDA statements](#), including a tweet of a horse that told people to stop taking ivermectin for COVID-19. They claimed the statements amounted to final agency action under the Administrative Procedure Act.



U.S. FDA   
@US\_FDA

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You are not a horse. You are not a cow. Seriously, y'all. Stop it.



fda.gov

**Why You Should Not Use Ivermectin to Treat or Prevent COVID-19**

Using the Drug ivermectin to treat COVID-19 can be dangerous and even lethal. The FDA has not approved the drug for that purpose.

12:57 PM · Aug 21, 2021 · Twitter Web App

“Defendants suggest that because Plaintiffs have continued to prescribe ivermectin, they have not been harmed. But the Plaintiffs’ ability to prescribe ivermectin in some cases does not negate the many times the FDA’s actions have interfered—and will continue to interfere—in others. Indeed, Defendants do not dispute that Plaintiffs have plausibly alleged ‘interference’ with the practice of medicine,” they said.

In a [statement](#) on Front Line COVID-19 Critical Care Alliance’s website, Marik said the court’s decision to dismiss their case against the FDA “is very disappointing because the court

decided that the centuries-old doctrine of governmental “immunity” gave absolute protection to the FDA for any wrongdoing or harm in misleading the public to stop taking ivermectin – a safe, well-studied, and proven drug for the prevention and treatment of COVID-19.”

“FDA’s maligning of the 40-year-old drug was not considered on the merits by the court as a result, even though FDA added fuel to the disinformation campaign that paved the way for dangerous vaccines and unproven treatments that created enormous profits for pharmaceutical companies while causing immense harm to public health,” he added.

The FDA has not issued a statement on the judge’s dismissal or plaintiffs’ appeal.