

1040268702
OKLAHOMA
CLEVELAND COUNTY } S.S.
FILED

JUN 12 2018

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

In the office of the
Court Clerk MARILYN WILLIAMS

STATE OF OKLAHOMA, ex rel.)
MIKE HUNTER, ATTORNEY GENERAL)
OF OKLAHOMA,)

Plaintiff,)

VS.)

PURDUE PHARM, L.P., ET AL.)

Defendants.)

Case No. CJ-2017-816

Judge Thad Balkman

Special Master: William
Hetherington

**DEFENDANTS JOHNSON & JOHNSON, INC., JANSSEN PHARMACEUTICALS, INC.,
ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., AND JANSSEN
PHARMACEUTICA, INC.'S MOTION FOR PROTECTIVE ORDER AND TO QUASH
DEPOSITION**

Defendants Johnson & Johnson, Inc., Janssen Pharmaceuticals, Inc.,¹ Ortho-McNeil-
Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively "Janssen"), hereby
respectfully move to quash a deposition noticed by Plaintiff the State of Oklahoma in the above-
captioned matter. This Court should quash the deposition because, as noticed, it is unduly
burdensome and vexatious.

¹ Janssen manufactured and marketed three opioid medications subject to the State's Petition: Duragesic, a highly-potent opioid pain reliever administered via transdermal patch and indicated only for pain severe enough to require around-the-clock opioid treatment and for which alternative treatment options are inadequate; Nucynta, an immediate-release opioid indicated for moderate to severe acute pain; and Nucynta ER, an extended-release, long-acting formulation of Nucynta, first approved by the FDA in 2011. The State reimbursed only 2,100 prescriptions for those medications—or an average of 210 per year—between 2007 and 2017. Defendant Johnson & Johnson is a holding company that has never manufactured or marketed any opioid medication.

On May 24, 2018, the State served *41* deposition notices on Janssen. Among those was a notice seeking testimony from a corporate representative on Janssen's government-related "efforts or activities in Oklahoma concerning opioids," including, for example, lobbying efforts and presentations made to the Oklahoma Health Care Authority's Drug Utilization Review Board, efforts related to "pain management guidelines," legislative efforts or activities, "law enforcement," and "prosecution" for "misuse, abuse, diversion, supply, and prescription." *See* Ex. A. The deposition was noticed for June 12, 2018—the other 40 depositions were noticed for other dates in summer and early fall.

On June 5, 2018, after evaluating the mass of notices, counsel for Janssen informed the State that it was working diligently "to identify the appropriate witness and available dates for the topic noticed for June 12," and advised the State that it would "not be able to have a witness available on" that date. *See* Ex. B. Counsel further explained that Janssen would "advise on availability as soon as we can, and hope to be able to provide several options to accommodate scheduling demands." *Id.* Despite the upcoming deposition, the State did not respond. It did not propose an alternate date. It did not insist that the deposition occur before a date certain. It said nothing.

The parties held a transcribed meet and confer teleconference to address various discovery issues on June 8, 2018. There, counsel for Janssen further explained that although the June 12, 2018 date was unworkable, Janssen could assure the State that it would make a deponent available to it, most likely a witness who would be designated to address several of the 41 topics noticed by the State. Ex. C at 14:18-17 ("we're going to get you a witness on this topic but it's . . . not a situation where you can just, you know, snap your fingers and magically a witness appears"). In other words, there was no risk that the State would not get the testimony it

was seeking; Janssen simply needed more time to adequately identify and prepare a proper witness, and to be sure that the taking of testimony was efficient should that witness be designated on multiple topics. *Id.* Counsel further explained, however, that the State’s own conduct was partly responsible for the necessary delay. Not only was the date proposed by the State unworkable as a matter of timing, but it would be prejudicial to prepare a corporate deponent on the noticed topic unless the State fulfilled its own obligation to produce documents relevant to the noticed deposition topic—documents that Janssen had requested *five months ago*. *Id.* at 19:17-20:16 (“I want to know, . . . am I going to get sandbagged with documents that we have requested from these programs and agencies, that have not yet been produced . . . and that a witness is going to be confronted with, that I’m not going to be able to prepare that witness . . . to talk about.”).

The State remained intransigent. The State declared on the record that unless Janssen made a deponent available by June 22, 2018—a mere 10 days after the noticed date—the State would continue with the deposition as noticed and unless Janssen filed a motion to quash. *Id.* at 16:10-21. The State’s threat and intransigence necessitated the instant motion, which should have been entirely unnecessary.

This Court possesses “broad discretion” to control the discovery process to ensure that it proceeds justly and efficiently. *Bank of Okla., N.A. v. Briscoe*, 911 P.2d 311, 318 (Okla. Ct. App. 1995). To that end, “district courts should not neglect their power to restrict discovery where justice requires protection for a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Quinn v. City of Tulsa*, 777 P.2d 1331, 1342 (Okla. 1989) (quotations and alterations omitted). The Court should exercise that power here, because the noticed deposition runs afoul of this standard in multiple respects.

This Motion, and the corresponding burden on the Court, was entirely avoidable. Janssen informed the State that the noticed date was unworkable, but also assured the State that it would provide a properly prepared deponent. Janssen simply needs additional time to identify and then prepare the witness. That is especially true considering that the noticed topic has nine subparts; given the topic's scope, demanding a witness on such short notice runs a real risk that the witness could not be adequately prepared, which serves neither parties' interest nor the purposes of the discovery rules. There simply is no reason—and the State has provided none—why the State could not provide Janssen a small amount of additional time. As noticed, the deposition is unduly burdensome. The Court should therefore quash the deposition in its entirety so the parties can work toward a mutually-agreeable date or, at a minimum, exercise its authority under § 3230(C)(2) to “enlarge . . . the time . . . for notice of taking the deposition.” *See, e.g., Tetra Techs, Inc. v. Hamilton*, 2008 WL 508167, at *5 (W.D. Okla. Feb. 22, 2018) (granting more time to adequately prepare witness for corporate deposition).

The Court should grant the Motion for another reason: Janssen's effort to prepare a corporate deponent on the noticed topic will be prejudiced by the State's ongoing failure to fulfill its own obligation to produce documents directly probative of the topic that were requested by Janssen five months ago. Those requests concern, among other things, the State's own Drug Utilization Review Board and law enforcement and prescriber-related efforts and they correspond directly to subparts (c), (h) and (i) of the noticed topic. *Compare* Exs. D (RFP Nos. 2 and 9) & E (RFP Nos. 2, 7, and 8), *with* Ex. A (Deposition Notice). Absent the requested documents, it is possible—even likely—that the State will surprise the witness with questions on relevant documents, responsive to Janssen's document requests, that the State has yet to produce and that the deponent has never seen. This may include, for example, communications between

Drug Utilization Review Board members about information provided by opioid manufacturers or the views of agency officials on legislative efforts to address misuse of prescription medicines. Forcing Janssen to designate a witness on the State's noticed topic before the State responds to relevant document requests served five months ago is directly contrary to the "truth-seeking" purpose of the discovery rules, which are designed to "eliminate secrets and surprise." *State ex rel. Remington Arms Co. v. Powers*, 552 P.2d 1150, 1152 (Okla. 1976).


Accordingly, not only should the deposition be postponed until Janssen can identify and adequately prepare a witness, but the State should be precluded from using documents responsive to Janssen's discovery requests that the State has yet to produce in discovery. Moreover, to prevent any gamesmanship, the State should be required to produce any responsive documents that it intends to use in the deposition at least two weeks before the deposition occurs. The Oklahoma discovery rules should not be abused for purposes of one side's litigation advantage.

CONCLUSION

For all these reasons, Janssen respectfully asks this Court to quash these burdensome deposition notices or, in the alternative, modify them to ensure that the appropriate corporate representative can be adequately identified and prepared.

Dated: June 12, 2018

Respectfully submitted,

By: 

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Pharmaceuticals, Inc., and Ortho-McNeil-
Janssen Pharmaceuticals, Inc. n/k/a/
Janssen Pharmaceuticals, Inc.*

CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), this is to certify on June 17th, 2018, a true and correct copy of the above and foregoing has been served via the United State Postal Service, First Class postage prepaid, to the following:

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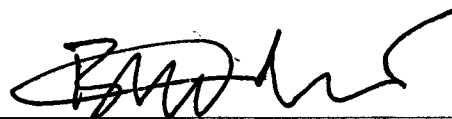
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ORTHO-MCNEIL-JANSSEN
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EXHIBIT A

**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER,)
ATTORNEY GENERAL OF OKLAHOMA,)

Plaintiff,)

vs.)

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK COMPANY;)
- (4) TEVA PHARMACEUTICALS USA, INC.;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS, INC;)
- (8) ORTHO-MCNEIL-JANSSEN)
PHARMACEUTICALS, INC., n/k/a)
JANSSEN PHARMACEUTICALS;)
- (9) JANSSEN PHARMACEUTICA, INC.,)
n/k/a JANSSEN PHARMACEUTICALS, INC.;)
- (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,)
f/k/a ACTAVIS, INC., f/k/a WATSON)
PHARMACEUTICALS, INC.;)
- (11) WATSON LABORATORIES, INC.;)
- (12) ACTAVIS LLC; and)
- (13) ACTAVIS PHARMA, INC.,)
f/k/a WATSON PHARMA, INC.,)

Defendants.)

**Case No. CJ-2017-816
Judge Thad Balkman**

**Special Master:
William Hetherington**

**NOTICE FOR 3230(C)(5) VIDEOTAPED DEPOSITION OF CORPORATE
REPRESENTATIVE(S) OF J&J DEFENDANTS**

TO:

VIA email

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COUNSEL FOR THE J&J DEFENDANTS

Please take notice that, on the date and at the time and location indicated below, Plaintiff will take the deposition(s) upon oral examination of the corporate representative(s) of Defendants, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, the "J&J Defendants") in accordance with 12 O.S. §3230(C)(5). The J&J Defendants shall designate one or more officers, directors, managing agents, or other persons who consent to testify on the J&J Defendants' behalf regarding the subject matters identified in Appendix A.

The oral and video deposition(s) will occur as follows:

DATE	TIME	LOCATION
June 12, 2018	9:00 a.m.	512 N. Broadway Ave. Ste. 300 Oklahoma City, OK 73102

Said depositions are to be used as evidence in the trial of the above cause, the same to be taken before a qualified reporter and shall be recorded by videotape. Said depositions when so taken and returned according to law may be used as evidence in the trial of this cause and the

taking of the same will be adjourned and continue from day-to-day until completed, at the same place until it is completed.

Dated: May 24, 2018



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was emailed on May 24, 2018 to:

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Trey Duck

Appendix A

The matters on which examination is requested are itemized below. The J&J Defendants must designate persons to testify as to each subject of testimony. This designation must be delivered to Plaintiff prior to or at the commencement of the taking of the deposition. *See* 12 O.S. §3230(C)(5). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the State's First Requests for Production of Documents and First Set of Interrogatories to the J&J Defendants.

1. Your efforts or activities in Oklahoma concerning opioids related to: (a) lobbying efforts; (b) campaign contributions; (c) presentations made to the Oklahoma Health Care Authority's Drug Utilization Review Board; (d) scheduling of opioids; (e) opposing the rescheduling hydrocodone combination products from Schedule III to Schedule II; (f) pain management guidelines in Oklahoma statutes; (g) legislative efforts or activities; (h) law enforcement; and (i) prosecution of any individual or entity related to use, misuse, abuse, diversion, supply, and prescription.

EXHIBIT B

From: Brody, Steve

Sent: Tuesday, June 5, 2018 5:23 PM

To: 'mburrage@whittenburrage.com' <mburrage@whittenburrage.com>; 'rwhitten@whittenburrage.com' <rwhitten@whittenburrage.com>; 'bbeckworth@nixlaw.com' <bbeckworth@nixlaw.com>; 'tduck@nixlaw.com' <tduck@nixlaw.com>; 'dpate@nixlaw.com' <dpate@nixlaw.com>

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Subject: FW: State of OK v. Purdue et al; Case No. CJ-2017-816; 2018-05-24 Notices for 3230(C)(5) Deposition of Corporate Reps. (J&J)

Counsel:

We are working to identify the appropriate witness and available dates for the topic noticed for June 12, but please be advised that we will not be able to have a witness available on the noticed date. We will advise on availability as soon as we can, and hope to be able to provide several options to accommodate scheduling demands.

O'Melveny

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Sent: Thursday, May 24, 2018 5:52 PM

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Subject: State of OK v. Purdue et al; Case No. CJ-2017-816; 2018-05-24 Notices for 3230(C)(5) Deposition of Corporate Reps. (J&J)

Counsel,

Please see attached Notices for 3230(C)(5) Videotaped Deposition of Corporate Representative(s) of J&J Defendants. Please let me know if you have any trouble accessing the Notices.

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EXHIBIT C

1 IN THE DISTRICT COURT OF CLEVELAND COUNTY

2 STATE OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel.,)
4 MIKE HUNTER, ATTORNEY GENERAL)
5 OF OKLAHOMA,)

6 Plaintiff,)

7 -vs-)

No. CJ-2017-816

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9 (2) PURDUE PHARMA, INC.;)
10 (3) THE PURDUE FREDERICK COMPANY;)
11 (4) TEVA PHARMACEUTICALS USA, INC.;)
12 (5) CEPHALON, INC.;)
13 (6) JOHNSON & JOHNSON;)
14 (7) JANSSEN PHARMACEUTICALS, INC.;)
15 (8) ORTHO-McNEIL-JANSSEN)
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17 JANSSEN PHARMACEUTICALS, INC.;)
18 (9) JANSSEN PHARMACEUTICA, INC.,)
19 n/k/a JANSSEN PHARMACEUTICALS,)
20 INC.;)
21 (10) ALLERGAN, PLC, f/k/a)
22 ACTAVIS PLC, f/k/a ACTAVIS,)
23 INC., f/k/a WATSON)
24 PHARMACEUTICALS, INC.;)
25 (11) WATSON LABORATORIES, INC.;)
(12) ACTAVIS, LLC; and)
(13) ACTAVIS PHARMA, INC.,)
f/k/a WATSON PHARMA, INC.,)

26 Defendants.)

27

* * * * *

28 MEET-AND-CONFER CONFERENCE CALL

29 ON JUNE 18, 2018

30 COMMENCING AT 10:49 A.M., CST

31 * * * * *

32

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38 REPORTED BY: BETH A. MCGINLEY, CSR, RPR

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1 (The Meet-and-Confer Conference Call commenced
2 at 10:49 p.m., CST, as follows:)

3 MR. BARTLE: This is Harvey Bartle from Morgan,
4 Lewis & Bockius on behalf of the Teva Defendants.

5 MR. MERKLEY: This is Nick Merkley from
6 GableGotwals on behalf of the Teva Defendants.

7 MR. BRODY: Steve Brody for the Janssen
8 Defendants.

9 MR. RIDGEWAY: Michael Ridgeway for the Janssen
10 and Johnson Defendants.

11 MR. LAFATA: Good morning, everyone. This is
12 Paul LaFata for Purdue.

13 MR. PATE: This is Drew Pate, Nix Patterson, for
14 the State.

15 MR. DUCK: Trey Duck, Nix Patterson, for the
16 State.

17 MR. CUTLER: Winn Cutler, Nix Patterson, for the
18 State.

19 MR. MERKLEY: Okay. I believe that's everybody.

20 MR. BARTLE: This is Harvey.

21 This is the Teva defendants' request for a
22 meet-and-confer on two things:

23 First, the State's corporate designee topic that
24 was issued for June 12th, 2018, and it was signed by
25 Mr. Duck on May 24th, 2018, and then, as well, is the

1 State's Responses and Objections to Defendant Cephalon,
2 Inc.'s Second Set of Interrogatories.

3 If it's all right, Drew, Trey, and, Winn,
4 we'll -- I guess, we'll start with the deposition notice.

5 MR. PATE: This is Drew. That's fine with us.
6 I think that makes the most sense. That will be,
7 probably --

8 MR. BARTLE: Okay.

9 MR. PATE: -- a shorter conversation.

10 MR. BARTLE: I would think so.

11 So, with regard to the -- the topic, itself, we
12 had some questions about -- about certain of the subtopics
13 within the topic.

14 Specifically, we're unclear as to what you mean
15 by "lobbying efforts, campaign contributions, scheduling
16 of opioids, opposing the rescheduling hydrocodone
17 combination products from Schedule III to Schedule II,
18 legislative efforts or activities, law enforcement, and
19 prosecution of any individual or entity related to the
20 use, misuse, diversion, supply and prescription."

21 And I can -- we can take those in turn. I'm
22 just trying to get a -- a more clear sense of what you
23 meant by "lobbying efforts."

24 MR. PATE: I -- this -- so, this is Drew.

25 We -- I think "lobbying efforts" is a pretty

1 well-understood term, so I'm not really sure I understand
2 the question. I mean, any -- and this goes for any of the
3 defendants, you know. It's -- it's y'all's lobbying
4 efforts concerning opioids. I mean, I think that's -- we
5 think that's pretty clear.

6 MR. BARTLE: And --

7 MR. PATE: In Oklahoma. In Oklahoma, I'm sorry.

8 MR. BARTLE: And -- in Oklahoma. And the
9 same way -- same way for "campaign contributions." As
10 they relate, solely, to opioids?

11 MR. PATE: Yeah. I mean -- this is Drew. Yeah.

12 MR. BARTLE: Okay. Does Oklahoma schedule
13 opioids? I'm just wondering about (d), "scheduling of
14 opioids." I thought that was entirely a DEA matter.

15 MR. DUCK: Yeah, hey, sorry. This is Trey.
16 Harvey, give us just a -- a sec.

17 MR. BARTLE: Okay.

18 MR. PATE: This is Drew. So -- sorry about
19 that.

20 I mean, I think that the intent here is if y'all
21 had efforts and activities that impact for the scheduling
22 of opioids, that, for topics, subparts (d) and (e), that
23 would impact how those would be scheduled, which includes
24 in Oklahoma, then that falls within what we're asking
25 about here.

1 MR. BARTLE: But if we didn't take any efforts
2 or activities in Oklahoma to those effect -- to that
3 effect, then there wouldn't be -- see, what I'm saying?

4 The way this is written, it wouldn't seem, to
5 me, that that -- anything that -- that's taken -- that's
6 taken place outside of Oklahoma, would be encompassed by
7 (d) or (e).

8 MR. PATE: Right, it -- but -- okay, this is
9 Drew, and -- and you asked for clarification on the topic
10 and what we meant by it, so that's what I'm trying to do.

11 So, with respect to the scheduling of opioids
12 and opposing the rescheduling of hydrocodone, I think you
13 guys know what we're getting at and what we're asking
14 about, and so that's how we -- as affecting Oklahoma.

15 MR. BARTLE: Okay. So that mainly relates more
16 to our efforts federally, dealing with the scheduling of
17 opioids?

18 MR. DUCK: This is Trey. I don't know the
19 answers to these questions. It's why we're wanting to ask
20 somebody under oath about these things.

21 But to the extent that Teva, or the other
22 defendants, with respect to their notices, took any
23 efforts in Oklahoma that were intended to affect the
24 scheduling of drugs, whether that was at the federal level
25 or DEA, or otherwise, the treatment of drugs in Oklahoma,

1 then that's what we want to ask about.

2 The answer may be as simple as, "We didn't do
3 anything," but, you know, we want an answer under oath on
4 that.

5 MR. BARTLE: Well -- well, I get it, Trey, but
6 that's a little different than what Drew just said. So
7 that's why I'm trying to figure this out.

8 Because you will -- I know you say you don't
9 know, but I -- you will admit that drugs are scheduled by
10 the -- by the DEA --

11 MR. DUCK: Yes.

12 MR. BARTLE: -- right? I mean, that's --
13 Oklahoma doesn't have its own separate schedules, right?

14 So that -- that's -- I mean, you guys just gave
15 me two different answers, so that's what it means -- why I
16 wanted to have this meet-and-confer. Because it doesn't
17 seem that you guys are -- I'm unclear about it and it
18 doesn't seem as if you're, necessarily, clear about it.

19 MR. DUCK: No, we're clear about it. It's just
20 that -- I mean, we're trying to keep this topic narrow for
21 you guys. What's -- I mean, what -- do you have an
22 objection to it involving national lobbying efforts that
23 would affect Oklahoma?

24 MR. BARTLE: But it's not national lobbying
25 efforts. We're talking about scheduling.

1 MR. PATE: Efforts to oppose the scheduling or
2 any efforts or activities related to the scheduling, on
3 how they should be scheduled.

4 MR. BARTLE: Opioids, generally. But that
5 would -- but that's a -- that's a federal issue, right?

6 MR. DUCK: This is Trey. That affects Oklahoma.

7 MR. BARTLE: I know. But as if -- you were
8 talking about scheduling, we're talking about what we did
9 with -- you're asking about things we did with the DEA,
10 right? I mean, if you're not, that's fine.

11 MR. PATE: Yes, that's what -- that's part of
12 what we're asking about.

13 MR. BARTLE: What else could there be for (d)
14 and (e) that would relate to things, other than the DEA?

15 See, I want to be able to prepare a witness on
16 this topic and I need to know, because it's unclear to me,
17 what this actually means.

18 MR. PATE: I want to be able to -- I mean, I
19 want to be able to ask a witness those questions, Harvey.

20 Like, I -- it's what Trey just said earlier, you
21 know, we -- we don't know the answers to these questions.
22 I don't know what all your company did or any of the
23 defendants did on this topic. But that's why we want to
24 ask the question.

25 So if there's nothing, outside of what you did

1 on the DEA, then maybe that's the answer. But we need to
2 ask the question.

3 MR. BARTLE: Oh, okay. Well, I -- we'll just
4 agree to disagree on that one.

5 MR. BRODY: Oh, the -- Harvey, before you go on
6 -- this is Steve Brody -- just so I'm clear.

7 Is it -- is it the State's expectation, with
8 this topic, that the defendants will prepare witnesses to
9 talk about their interactions with the DEA and any of -- I
10 guess, what they would define as lobbying efforts with
11 respect to the DEA, at the federal level, such that the
12 topic is not really focused on Oklahoma, it's focused on
13 the company's interactions with the federal government?

14 MR. PATE: Steve, could you say that again? I'm
15 sorry.

16 MR. BRODY: Sure. Just -- I -- you know, I just
17 want to be clear, as we're trying to identify and prepare
18 a witness.

19 You know, is it the State's intention, here, to
20 have a witness designated and take testimony on the
21 defendants' interactions with the DEA or the federal
22 government, with respect to the scheduling of opioid
23 medications, such that the topic, here, as it relates to
24 scheduling, is not focused on Oklahoma, but, rather, it is
25 focused on federal efforts?

1 MR. PATE: Our focus is, certainly, on Oklahoma,
2 just like our focus on the marketing is -- that you all
3 did, is in Oklahoma. But the issue is that you guys did
4 things at a -- your clients did things at a national level
5 that impact Oklahoma and so, to the extent they did that
6 in a way that impacts Oklahoma in the same way it impacts
7 other states, we need to ask questions about that, and
8 what the -- so that we can understand how that affected
9 Oklahoma.

10 MR. BRODY: So -- so this is, I guess, then,
11 going, very broadly, toward federal petitioning activity?

12 MR. PATE: All right. Look, let me try to
13 simplify this.

14 For purposes of this topic, we will just focus
15 -- we're not saying we won't ever need to know about this,
16 but, to simplify it, for purposes of this topic and the
17 one we're looking at today, we will just talk about or
18 want to know about actual efforts or activities in
19 Oklahoma, Oklahoma lobbying efforts for these, rather than
20 federal lobbying efforts related to these topics. And if
21 there are none, then there are none.

22 MR. BRODY: All right. This is Steve. Thank
23 you. That's helpful.

24 MR. BARTLE: All right. Let's move on to "law
25 enforcement," (h).

1 I don't -- "your efforts or activities
2 concerning opioids related to law enforcement"? It
3 doesn't --

4 MR. PATE: Yes.

5 MR. BARTLE: -- seem to make that much sense.

6 MR. DUCK: This is Trey. Can you elaborate, you
7 know, where -- where the confusion is?

8 MR. BARTLE: Well, I read the sentence, "your
9 efforts or activities, in Oklahoma, concerning opioids,
10 related to law enforcement." If you --

11 MR. DUCK: Right.

12 MR. BARTLE: -- read it that way, I -- I don't
13 know what that means.

14 MR. PATE: Well, did your com- -- I mean, did --
15 I mean, did the company do anything or have any efforts
16 related to opioids and law -- you know, concerning law
17 enforcement in Oklahoma?

18 MR. BARTLE: Are you --

19 MR. PATE: Did you --

20 MR. BARTLE: -- talking about --

21 MR. DUCK: With anything --

22 MR. PATE: Did you -- I mean --

23 MR. BARTLE: Are you talking about police or are
24 you talking -- what are you talking -- with local police
25 departments, with the AG's office, which, presumably, you

1 would know?

2 Like, what -- what -- when you say "law
3 enforcement", does it mean the enforcement of law? Does
4 it mean a government entity? What does it mean?

5 MR. PATE: It means law enforcement, Harvey.
6 You may think it's broad, but that's -- that's a different
7 question.

8 MR. BARTLE: Drew, I have to prepare a witness
9 and I want to prepare a witness and I'm just trying to
10 figure out what that means. And if you don't know what it
11 means and you can't tell me what it means, and you're just
12 going to repeat the word back to me, then we'll move on.

13 MR. PATE: I can tell you what it means, but I
14 think everyone on the phone knows what it means. I mean,
15 it means law enforcement. It means any group in Oklahoma,
16 or entity or agency in Oklahoma that your company dealt
17 with, concerning opioids, that performs a law enforcement
18 function.

19 I mean, I can say it a bunch of different ways,
20 but, you know, I think you, definitely, know what law
21 enforcement is.

22 MR. BARTLE: Okay. Move on.

23 And, similarly, I'm unclear about (i). Are you
24 talking about whether or not our company was involved in
25 the "prosecution of any individual or entity related to

1 the use, misuse, abuse, diversion, supply and prescription
2 of opioids"?

3 MR. PATE: Yes.

4 MR. BARTLE: Then that was, like, assisted a
5 prosecutor?

6 MR. PATE: Prosecution or a defense.

7 MR. BARTLE: All right. We can move on from
8 that, unless -- unless you have anything else you want to
9 talk about with regard to that.

10 MR. PATE: So are you all going to produce
11 witnesses on June 12th for any of the defendants?

12 MR. BARTLE: Teva is not, as we said -- as I
13 said in my email the other day.

14 MR. DUCK: We're going to be there, ready to
15 take the deposition, so you all need to move to quash if
16 you're not going to be there.

17 MR. BARTLE: All right.

18 MR. BRODY: We sent you an email -- I sent you
19 an email, saying that we're not going to have a witness
20 available to testify on Tuesday.

21 Are you now telling me that that email, telling
22 you that we're trying to identify the right witness, to
23 prepare that witness, and -- and we're going to be
24 providing different options on dates -- that that's not
25 sufficient, that I have to file a motion to quash?

1 Because, if that's the case, I'll do that.

2 MR. PATE: Are you -- this is Drew. Are you
3 going to commit to provide a date, prior to June 22nd?

4 MR. BRODY: We will not have a witness
5 available, prior to June 22nd, for that deposition. And
6 one of the reasons is that I expect that the witness, who
7 will, ultimately, be designated on the June 12th topic, is
8 very likely to be somebody who will be addressing other
9 topics that were noticed, as well, amongst the 40 topics.

10 What we're trying to do is -- is get our arms
11 around whether there's going to be overlap, where we're
12 going to have the same witness addressing different
13 things, so that we can, you know, for efficiency's sake,
14 have a situation where, you know, we may tell you, "Well,
15 this week, we want to address these six topics -- six,
16 seven topics," whatever it is, "it's going to be the same
17 witness on them and so, you know, let's set up a situation
18 where we can just go back-to-back days, as long as it
19 takes to knock it out."

20 That's -- that's the intention. It will not be
21 before June 22nd. So if -- I mean, if you're -- if you're
22 telling me that -- that there is no flexibility on
23 scheduling, that you're going to, you know, show up and --
24 and -- and note a nonappearance, notwithstanding the fact
25 that we communicated -- I think I sent my email out on

1 Tuesday of this week -- I'm, you know, happy to put
2 together a motion to quash and get that on file, if I have
3 to. Just let me know.

4 MR. PATE: We need -- look, what we're trying to
5 do is -- and what we've been asked to do by you -- is to
6 prioritize depositions, as we can, based on where we're at
7 in discovery. And so that's what we've done, that's why
8 we've rolled out notices, in different orders, the way we
9 have.

10 And so I understand what you're saying about
11 topics, but this is a deposition that we're ready to take
12 now, we believe we're entitled to take now. And if you
13 can't provide a witness by June 22nd, then you need to
14 move to quash the notice.

15 Now, if you tell me you're not going to be there
16 on June 12th, we're not going to waste everybody's time
17 and money and show up, just to take a certificate of
18 nonappearance, if you're telling me you're definitely not
19 going to be there. But if you're not going to be there,
20 then you need to -- you do need to file a motion to quash,
21 so that we can take this up with the Court.

22 MR. BRODY: All right. I'll file a motion --
23 I'll file a motion to quash. I mean, we're -- we're going
24 to get you a witness on this topic, but it's -- you know,
25 it's not a -- it's not a situation where you can just, you

1 know, snap your fingers and, magically, a witness appears,
2 who's going to be ready to provide the information
3 requested, in a very broad topic, that covers a number of
4 different areas, as we've covered today.

5 But I -- I hear you, I have to file a motion to
6 quash. We'll file a motion to quash. I think it's a
7 waste of our time. I think it's a waste of the Court's
8 time. But, you know, you've been clear on that. We'll do
9 it. We'll -- we'll waste the time. I'm --

10 MR. DUCK: This is Trey --

11 MR. BRODY: -- happy to do it.

12 MR. DUCK: This is Trey, and just to address
13 some of those things.

14 We didn't ask you to snap your fingers and
15 produce a witness to you (sic). We just offered you 10
16 additional days to identify somebody and prepare them.
17 So, you refused that. We'd ask that you file a motion to
18 quash, so it can be taken up.

19 We think you all are wasting time, not us. But
20 since you're -- you're going to refuse to cooperate, file
21 your motion, we'll take it up with the Court. That's the
22 way these things work.

23 MR. BARTLE: Teva --

24 MR. DUCK: Before --

25 MR. BARTLE: In this situation, Teva will be

1 filing a motion to quash, too.

2 MR. DUCK: It's all about you.

3 MR. LAFATA: I suppose I have to be in that
4 position. I think it would -- this is Paul, for the --
5 for the court reporter.

6 I think it would be a lot better to do what
7 Steve was suggesting, which is to allow the parties to get
8 witnesses that can be prepared on topics that have
9 similarity and then have the topics and the witnesses kind
10 of lined up, so they get knocked out. That's a --
11 usually, the way these things work, when we have a lot of
12 topics to cover, and there might be a witness that can
13 cover three or four of them and one that can only cover
14 one, and then we cut -- we get the preparation done.

15 But all of that assumes we can understand what
16 the subjects are in the notice. And I'm afraid, from this
17 discussion, it's really hard to understand several of
18 these topics, by the way they've been written and
19 explained in this call.

20 But, putting that aside, even if we did
21 understand what they were, as written, I -- I don't think
22 this is the best way to go about it, in terms of actually
23 getting the discovery done. But if that's what is being
24 insisted upon, then I suppose there's no alternative being
25 made available.

1 MR. DUCK: Well, we disagree with the
2 characterization, Paul -- this is Trey, by the way.

3 We believe we've given you -- been cooperative
4 in giving you 10 additional days after the notice date,
5 it's plenty of time for you all to get this done, and you
6 all refuse that.

7 I mean, I -- well, never mind. I mean, it
8 sounds like you've got -- you've identified and -- each of
9 you -- reasons to file a motion to quash, so we'll respond
10 to your motion.

11 MR. BRODY: For purposes of, you know, in- -- in
12 forming that motion a little bit, can you tell us when the
13 State will complete its production of documents from the
14 programs and agencies that are implicated by the June 12th
15 topic?

16 MR. DUCK: I don't understand the question.

17 MR. BRODY: Well, you're -- you're asking about
18 presentations that may have been made by defendants to
19 certain offices. You know, take law enforcement, as an
20 example, agencies and the like, at the state level.

21 Can -- so can you -- I mean, can you tell us
22 when the State will complete its production of documents
23 from the agencies and programs that are implicated by the
24 deposition that you want to take of defendants?

25 MR. DUCK: So there's a -- there's an assumption

1 or something implicit in that question that I'd like to
2 clarify, first.

3 Steve, is it your position that, prior to taking
4 a deposition, that the party taking a deposition must
5 produce documents, to the party presenting a witness, any
6 documents that that taking party believes may be relevant
7 to the topic?

8 MR. BRODY: No, I was just -- I'm just trying to
9 get a sense, so that I -- you know, that I can assess. I
10 mean, I want to know, you know, when I'm producing the
11 witness, am I going to get sandbagged with documents that
12 we have requested from these programs and agencies, that
13 have not yet been produced, that are going to be
14 introduced, and that a witness is going to be confronted
15 with, that I'm not going to be able to prepare that
16 witness, potentially, to talk about.

17 MR. PATE: Steve -- this is Drew -- as you know,
18 as a corporate designee -- is charged with coming in,
19 prepared to talk about the knowledge that the corporation
20 has or reasonably has available to it, and so that's what
21 we're expecting with the witness. It's not informed by
22 our production of documents to you.

23 It's -- you say that they're -- if the witness
24 says that there's something that the corp- -- the company
25 didn't have or didn't know about, that's -- that's your,

1 you know, option to do that, if the company really didn't
2 have this. But, you know, these are your efforts and
3 your ac- -- your company's efforts and activities, so...
4 and their own presenta- -- any presentations they make.

5 MR. BRODY: All right. So I guess I can take
6 that as a -- as a -- I'm not going to get an answer to the
7 question.

8 MR. DUCK: You can --

9 MR. BRODY: Harvey, I'll let you move on.
10 I'll --

11 MR. DUCK: -- take it as a question that we
12 don't believe is -- has a reasonable basis. I mean,
13 you're asking us to produce, back to you, information that
14 your company already has, which is a waste of time and
15 something that's not required by the rules.

16 So, to the extent that's what you're asking to
17 do, yeah, we're not going to do that, because it's not
18 required and it's not done --

19 MR. BRODY: But that --

20 MR. DUCK: So you're -- you're --

21 MR. BRODY: But --

22 MR. DUCK: -- making it sound like this is some,
23 you know, run-of-the-mill thing that everyone does in
24 litigation; but, no, it's not. No one does that.

25 MR. BRODY: This is Steve. That -- that wasn't

1 my question, but let's -- I mean, I'm -- I'm not going to
2 get an answer to my question, so let's -- let's move on.

3 Harvey, I don't mean to -- apologize --

4 MR. BARTLE: All right. Well --

5 MR. BRODY: -- for interrupting your
6 meet-and-confer, here.

7 MR. BARTLE: All right. Can we talk about the
8 responses and objections to the -- Cephalon's second set
9 of interrogatories?

10 MR. DUCK: Sure.

11 MR. BARTLE: I guess, the first thing I'd like
12 to address is your objection based on the 30-interrogatory
13 limit.

14 Cephalon has not issued 30 interrogatories.
15 Each party is entitled to 30 interrogatories. You decided
16 to sue 13 defendants and, thus, they're each entitled to
17 30. I don't -- I don't see how you can refuse to answer
18 certain interrogatories that Cephalon has propounded,
19 based upon interrogatories that have been offered by other
20 parties.

21 MR. PATE: This is Drew. So I think we
22 explained our position on this, both at the hearing with
23 Judge Hetherington on discovery limits and in the
24 objections to these requests, as far as how we get to the
25 fact that you guys, in our view, have exceed -- far

1 exceeded the 30-interrogatory level or 30-interrogatory
2 limit, by our count.

3 But, by your own count, you all served joint
4 interrogatories, that was your choice and you can do that,
5 but those -- our view is that those count against each of
6 you and that's how we get to the 30. I mean...

7 MR. BARTLE: Okay. Well --

8 MR. PATE: I understand that, you know, you all
9 have chosen to divide up your discovery requests amongst
10 all the different subsidiaries. But, as you guys know,
11 we've told you, from the start, we view each defendant as
12 a -- as three different families of defendants and that
13 you all should not be entitled, and aren't entitled, to 30
14 per subsidiary, it's -- should be treated as 30 per
15 family. And then, as I explained, we believe the joint
16 interrogatories count against each of you guys.

17 MR. BARTLE: Well, obvious- -- obviously, we'll
18 disagree with that, but we'll address that with Judge
19 Hetherington further.

20 MR. BRODY: Drew --

21 MR. BARTLE: Let's talk about --

22 MR. BRODY: This is -- this is Steve. We'll be
23 moving on that, too, the Janssen -- the Janssen second
24 set.

25 MR. BARTLE: With regard to Interrogatory No. 1,

1 you didn't identify any of the 245 prescriptions that were
2 unnecessary or excessive and we're wondering why you
3 didn't identify them.

4 MR. PATE: This is Drew. Harvey, you know,
5 we've gone over this, I think, a few different times, in a
6 few different contexts and, right now, the answer we've
7 given you is the answer -- the best answer that we can
8 provide, and sufficiently answers the interrogatory. And
9 when we are in a position to provide more information or a
10 supplemental answer, including when expert reports are
11 due, we're going to do that.

12 MR. BARTLE: So, before you filed your
13 complaint, did you identify any of those 245 prescriptions
14 as unnecessary or excessive?

15 MR. PATE: Harvey, I'm not going to engage in a
16 back-and-forth like that with you on a -- on a
17 meet-and-confer, just about the adequacy of the response.

18 MR. BARTLE: Well, you had to have some basis,
19 Drew, to allege that they were unnecessary or excessive.

20 So I'm asking if you did and, if you did, you
21 should be able to identify at least certain of them that
22 you believe are unnecessary or excessive.

23 MR. PATE: The basis that's alleged -- the basis
24 is alleged in the petition, which has defeated your motion
25 to dismiss on this very same point, and that -- and we've

1 provided multiple answers to these interrogatories, at
2 this point, across all the different defendants.

3 So you can keep asking the question, but we're
4 going to continue to give you the same answer, until, as
5 we've said in our responses, we're in a position to
6 provide more information.

7 MR. BARTLE: So you didn't have any good faith
8 basis to allege that any of them were unnecessary or
9 excessive before you filed your complaint?

10 MR. PATE: That is -- this is Drew. That is
11 absolutely not what I said and the record reflects that.
12 I'm not -- like I told you at the beginning, Harvey, I'm
13 not going to get into a back-and-forth with you like that.
14 If you want to talk about the adequacy of our response,
15 we'll do that.

16 MR. BARTLE: Well, it should --

17 MR. PATE: I'm not --

18 MR. BARTLE: -- identify them, and you didn't
19 identify any.

20 MR. PATE: You have the answer.

21 MR. BARTLE: Okay. Is -- is your answer going
22 to be based on expert discovery that you're going to
23 provide to us in November?

24 MR. PATE: That's certainly part of it.

25 MR. BARTLE: Okay. And then you allege, in your

1 answer, that "opioid prescriptions written in the State of
2 Oklahoma since 1996 and reimbursed by Sooner Care, other
3 than those written for end-of-life palliative care or for
4 a three-day supply to treat acute pain, were unnecessary
5 or excessive and/or false, fraudulent or otherwise
6 reimbursed, in violation of the Oklahoma Medicaid Fraud
7 Act." That's in your response to Interrogatory No. 1.

8 Is it your position that, for example, for Actiq
9 and Fentora, an -- an opioid for oncology patients,
10 suffering from breakthrough cancer pain -- has to get a
11 prescription every three days?

12 MR. PATE: Is that a different interrogatory,
13 Harvey? This is Drew.

14 MR. BARTLE: The same one. We're talking about
15 Actiq and Fentora. We're talking about 245 prescriptions
16 for Actiq and Fentora and you're saying, in your response,
17 that "unless it's for end-of-life palliative care or for a
18 three-day supply to treat acute pain," that "it's
19 unnecessary or excessive," and I'm just asking, Actiq and
20 Fentora, indicated for breakthrough pain for oncology
21 patients.

22 Is it your -- is what you're saying, here,
23 that -- that an oncology patient needs to go back every
24 three days for an Actiq or Fentora prescription?

25 MR. PATE: I think you need to read the entire

1 answer. There's a No. 2, also. And I'm not going to be
2 able to -- I'm not going to, you know, give a deposition
3 on the answer, obviously. The answer is what it is. And
4 I think --

5 MR. BARTLE: You think --

6 MR. PATE: -- we've identified everything about
7 the position that -- go ahead. What were you saying?

8 MR. BARTLE: Well, I mean, I'm trying to figure
9 this out. I mean, I'm trying to figure out if I have to
10 move to compel or not.

11 Interrogatory 2. You haven't provided the basis
12 for alleging that it was unnecessary or excessive, except
13 to say, "The State will produce and disclose expert
14 information, in accordance with the scheduling order
15 entered by the Court."

16 I mean, is this -- is that -- is whether or not
17 something is unnecessary or excessive subject to expert
18 testimony that you intend to provide to us in November?

19 MR. PATE: There's a three-or-four-page answer
20 to this interrogatory. You're on No. 2 now?

21 MR. BARTLE: Uh-huh.

22 MR. PATE: Okay. So it's incorrect to say that
23 our answer is just, "We're going to provide expert
24 testimony," so --

25 There's a three-to-four-page answer to this

1 interrogatory that provides the answer that we can provide
2 right now.

3 MR. BARTLE: So you can't provide any other
4 answer than what's in this interrogatory?

5 MR. PATE: Every -- Harvey, everything you're
6 saying is that you disagree with the answer, and that's
7 fine, I'm not surprised by that, but that's not -- you and
8 I don't need to waste time meeting and conferring about
9 how we disagree about the answer.

10 MR. BARTLE: Well, I understand, but the -- the
11 question was, for each one that you identified as an
12 unnecessary or excessive, to describe the basis, and you
13 haven't identified, one, any of them and, two, described
14 the basis for your position.

15 MR. PATE: And we believe -- we believe we have
16 described the basis. If we -- if you think our answer is
17 inadequate and is not responsive, you can -- you can take
18 that up with the Court, so -- we believe we've answered
19 the interrogatory.

20 MR. BARTLE: All right. Interrogatory No. 3.
21 Do you still refuse to identify the name and address of --
22 of doctors who had issued prescriptions?

23 MR. PATE: Yes.

24 MR. BARTLE: And then you, also, object to this
25 one on HIPAA grounds and I'm wondering why that is.

1 MR. PATE: Why did we object on HIPAA grounds?

2 MR. BARTLE: Yeah, a HIPAA protective order.

3 MR. PATE: They're still -- there's still -- I
4 mean, we preserve our objection. There's, I mean,
5 HIPAA-protected information in here and so that's why --
6 that's being requested -- and so that's why we objected.

7 MR. BRODY: Are you claiming -- this is Steve.
8 I'm sorry. I want to be sure I'm catching this correctly.

9 Are you claiming that the HIPAA protective order
10 is inadequate to provide the protections that HIPAA
11 requires?

12 If -- because, if that's the case, we can go
13 back and we can amend the protective order, but tell us
14 how it's --

15 MR. DUCK: This is Trey --

16 MR. BRODY: -- tell us how it's inadequate.

17 MR. DUCK: This is Trey. Two points, there.

18 First, a HIPAA protective order does not require the
19 production of protected health information. It, simply,
20 you know, provides protection in the event that a party
21 chooses to provide protected health information. So,
22 that's Point 1.

23 Point 2. Actually, I'll be sending you all an
24 email later today with a proposed amendment to the
25 protective order, to include some additional protections

1 under 42 CFR Part 2, which provides heightened security
2 requirements for people who are receiving addiction
3 treatment. So we actually do need to strengthen the
4 protective order.

5 However, that said, just because we have a
6 strong protective order, that we believe is sufficient to
7 allow us to produce sensitive or protected health
8 information, the existence of that order does not require
9 us to produce it and, in certain instances, we still may
10 decide that it's not appropriate to produce protected
11 health information.

12 MR. BARTLE: But not on the basis of a HIPAA
13 objection?

14 MR. DUCK: (Indiscernible).

15 MR. MERKLEY: What did you say, Trey? I'm
16 sorry.

17 MR. BARTLE: But that was --

18 MR. MERKLEY: Harvey, hold on. The court
19 reporter -- neither the court reporter, nor I, could hear
20 what Trey said.

21 MR. DUCK: Starting when, Nick?

22 MR. MERKLEY: Just --

23 MR. BARTLE: Let me ask my question.

24 MR. MERKLEY: Okay.

25 MR. BARTLE: So my understanding is you can --

1 you cannot produce -- I think your argument is you cannot
2 produce HIPAA-protected information for other reasons; but
3 if we have a HIPAA protective order, HIPAA isn't a reason
4 not to produce it.

5 MR. DUCK: Here's the -- here's the point.
6 We're still going to preserve objections where we feel
7 it's necessary. I mean, if -- if that bothers you and you
8 don't want us to have objections to our responses, then
9 you can file a motion to ask for the Court to overrule it.

10 MR. BARTLE: Well, are you -- are you -- are you
11 withholding information based upon HIPAA?

12 MR. PATE: Say that again, Harvey. We're --
13 we're going to -- look, like we told you guys at the
14 beginning --

15 MR. BARTLE: I just want to know if you're
16 withholding information based on HIPAA. I understand you
17 might be preserving objections, and I get it, but are you
18 withholding information, documents and/or interrogatory
19 answers based upon a HIPAA object- -- based upon a HIPAA
20 objection?

21 MR. PATE: Subject to what Trey just said about
22 strengthening the protective order with those provisions,
23 then, on this interrogatory, we are withholding it based
24 on HIPAA objections, but we preserve the objection.

25 And as we informed you guys, you know, before --

1 I think at the last hearing -- we aren't producing the
2 doctors' names and the patients' names.

3 MR. BARTLE: Are you also -- are you
4 withholding -- are you -- are there any other
5 interrogatories in this set, which you -- on which you've
6 asserted the HIPAA objection, that you're withholding
7 information based on HIPAA?

8 MR. PATE: The answer is the same for all of
9 them.

10 MR. BARTLE: Okay.

11 MR. PATE: We're preserving the objection.

12 MR. BARTLE: Okay.

13 MR. BRODY: Let me ask, just to be clear, then.
14 Then what is the basis for the refusal to identify patient
15 and doctor names?

16 MR. DUCK: I -- I might be able to answer the
17 question, Steve -- this is Trey -- but, first, I've --
18 I've got to ask you a couple of questions.

19 You have the -- the names, the identities of --
20 of patients. Is it your intention to contact those
21 patients about their protected health information?

22 MR. BRODY: I mean, I'm not going to rule
23 anything in or out. I just want to know what the basis is
24 for withholding the information. I mean, if the basis
25 is --

1 MR. DUCK: Is it your intention to contact --

2 MR. BRODY: If the basis -- let me -- let me ask
3 you this. Let me finish, Trey.

4 If -- I mean, if the basis is, "You guys might
5 contact them and talk to them about their protected health
6 information," you know, you can tell me, "That's the
7 basis."

8 If -- if your -- you know, if you tell me
9 that -- "Well, if defendants would agree that they
10 wouldn't affirmatively reach out to and speak to any
11 patient at all, we would produce the patient identities"
12 -- I mean, you know, tell me if that's the case, and --
13 and, you know, what the basis is for that position.

14 You guys raised the objection. You guys said
15 you're not going to produce this stuff. We requested it.
16 We need to know the basis.

17 And all I'm asking you for is, if you're not
18 refusing to -- I -- to produce the patient and doctor
19 identities based on HIPAA, what is the basis for your
20 refusal to produce and provide that information that was
21 requested?

22 MR. PATE: This -- this is Drew. And we need to
23 know why you're asking for something, in order to answer
24 the question, and that's part of the meet-and-confer
25 process.

1 MR. BRODY: No, you -- you don't. You don't
2 need to know why we're asking for it. You need -- you
3 need to -- you need to tell us the basis for your refusal.

4 We -- we requested it; you've objected. You're
5 refusing to produce it. You indicated, in your written
6 responses, that the basis was HIPAA. You've told us, on
7 this meet-and-confer, on the record, that it's not HIPAA.

8 We need to know what the basis is for your
9 refusal to produce that information.

10 MR. PATE: I think Reggie already explained this
11 to you at the meet-and-confer we had prior to the last
12 hearing.

13 MR. BRODY: So there's no additional -- there's
14 no additional information, beyond what Reggie said at the
15 hearing, that would explain the basis for your refusal to
16 produce this information? Although we now know that it is
17 not HIPAA.

18 MR. DUCK: Well, back --

19 MR. BRODY: Now --

20 MR. DUCK: Let's back up for a second, because,
21 you know, you all are trying to make this very simple and
22 clear, in black and white, about the HIPAA-protected
23 information point, and it's not quite as simple and black
24 and white as you'd like for it to be, Steve. I -- I wish
25 it was simple, too.

1 It's a complex case, that has a lot of moving
2 parts and a lot of sensitive information about a lot of
3 citizens in the State of Oklahoma. So, it's not simple.
4 It's not black and white.

5 We are trying our very best to provide you with
6 what you need, without unnecessarily providing protected
7 health information. We're trying to provide you with
8 the -- the minimum amount necessary to do what you need to
9 do. So, you know, that's all that -- that HIPAA really
10 allows us.

11 And I -- you're saying that we have said, on the
12 record, that there's no HIPAA aspect to our objection.
13 That's just not true.

14 The -- there is -- the reason that we don't want
15 to provide you these names is because you -- Steve
16 specifically, and Harvey, you, too -- have said, at prior
17 meet-and-confer's, that you all intend to contact
18 patients, that you intend to contact physicians. We don't
19 think that's appropriate; we don't believe it's necessary;
20 we don't think it's relevant.

21 So, under HIPAA, we provided you a minimum
22 amount necessary of protected health information that you
23 need in this case.

24 If you all are willing to stipulate and agree to
25 not contact the patients and to not contact the physicians

1 that are identified, we will consider that. That may well
2 appease our concerns.

3 But, so far, we haven't heard you all say that,
4 and maybe we can have a discussion about that in the
5 future, if you would like.

6 MR. BRODY: So -- just so -- so I'm clear.
7 You're refusing to provide the patient -- any patient
8 identifying information, you're refusing to provide
9 identifying information for the physicians who, allegedly,
10 wrote these false and fraudulent prescriptions for
11 opioids, and the basis for your refusal to do that is
12 "maybe HIPAA, maybe not HIPAA, maybe some part of HIPAA."

13 You're not willing to say that it's not HIPAA.
14 "It -- it might be." Your position is, "It's
15 complicated." Is there any other reason?

16 MR. DUCK: We don't think it's relevant.

17 MR. BARTLE: Trey, can I ask you a question?
18 This is Harvey. Who did --

19 MR. DUCK: Yes.

20 MR. BARTLE: Who was -- who was the -- who
21 received the alleged fraudulent misrepresentations that
22 led to these prescriptions being written? Did the doctors
23 receive them? Are you -- are you claiming no doctor
24 was -- received a fraudulent misrepresentation?

25 MR. DUCK: Harvey, of course, I'm not claiming

1 that. But, listen, we can sit here and argue about the
2 merits of the case or the elements of the claims. If you
3 all think you need the information and we haven't provided
4 it to you, file a motion. I mean --

5 MR. BARTLE: Okay. All right.

6 MR. BRODY: That --

7 MR. DUCK: You know.

8 MR. BRODY: That -- yeah, this is Steve. Trey,
9 that's fine, we'll -- we'll file a motion.

10 MR. DUCK: And, as far as I can tell -- you
11 know, Harvey has made his point about physicians before.

12 But, as far as I can tell, Steve -- and I don't
13 want to put words in anybody's mouth -- but out of the
14 parties and out of the representatives for the parties, I
15 think you're the only one who's really pushing on the
16 patient names. If I'm wrong about that, then -- then we
17 can talk about it.

18 Maybe you all are, all of you, pushing for the
19 patient names. But my sense was that other defendants,
20 and, even, some of the lawyers representing Johnson &
21 Johnson, might be okay with not ever receiving the patient
22 names, so long as there is a common identifier.

23 So, you know, maybe you can help us there. I
24 don't -- if we're arguing about something we don't need to
25 be arguing about, then we are wasting time.

1 MR. BARTLE: And so, guys, I got a hard stop for
2 a 1:00 o'clock call with the Court, so I got to move on,
3 on these interrogatories.

4 MR. DUCK: Well, Steve, I was just asking, maybe
5 you confer with some of your colleagues and see if this
6 sticking point on patient names is really something that
7 you want to dig in on.

8 MR. BRODY: I mean, you guys have been clear on
9 your objections. We're going to evaluate what we need to
10 do and -- and I think you can expect a motion on it.

11 MR. DUCK: Fair enough. I just ask that you
12 make sure your -- your team members agree with you.

13 MR. BRODY: I don't think you need to worry
14 about our teams' disagreement about what we need and do
15 not need for discovery in this case in order to properly
16 and -- and, as we have a right to do, defend the case.

17 MR. DUCK: Well, I should worry about it,
18 because you all are giving us two different messages, but,
19 you know, file a motion, if you feel like you need to.

20 MR. BARTLE: All right. Let's move to
21 Interrogatory No. 4, saying you will provide business
22 records related to this.

23 So you're going to provide records related to
24 the misrepresentations to the healthcare providers?

25 MR. PATE: This is Drew. We're going to

1 provide -- I mean, yes, we're going to provide the -- the
2 documents that we have, to -- that will answer this
3 interrogatory.

4 MR. BARTLE: And, similarly, for No. 5, you're
5 going to identify the misrepresentations, made to the
6 Oklahoma state employees, by providing documents?

7 MR. PATE: The doc- -- for whatever documents
8 the State has, we will certainly provide them.

9 MR. BARTLE: Okay. And you're not going to go
10 through and identify the misrepresentation per
11 prescription, right?

12 MR. PATE: Correct.

13 MR. BARTLE: No. 6.

14 MR. PATE: We don't -- and we don't -- just to
15 be clear, we don't believe that's required, and our answer
16 has laid -- laid that out.

17 MR. BARTLE: I know, we -- we disagree about
18 that, but I don't think I'm going to convince you
19 otherwise today.

20 No. 6. You refuse to answer this interrogatory
21 on a number of bases, but you, also, say it's a "premature
22 contention interrogatory." And all we're asking to do
23 here is "Identify each instance in which you and any other
24 entity, that provides or administers benefits for your
25 programs, denied payment or reimbursement for a

1 prescription of Actiq or Fentora as unnecessary or
2 excessive."

3 Now, "unnecessary or excessive" is -- is a
4 direct quote from your complaint; you guys wrote that. So
5 I don't think it's a contention interrogatory. It's just
6 asking you for factual information about when a --
7 Oklahoma denied reimbursement for a claim.

8 MR. PATE: It's a contention interrogatory, in
9 our view, among other reasons, because you're asking for
10 each and every instance in which this occurred, and,
11 regardless, we told you that we'll produce business
12 records related to this interrogatory. We'll produce
13 documents.

14 MR. BARTLE: But, now, again, Trey -- I mean,
15 I'm sorry, Drew -- I'm only talking about 245
16 prescriptions, here.

17 MR. PATE: I'm well aware that that's what
18 you're talking about, Harvey. You say it every time we
19 talk.

20 MR. BARTLE: I know you are. I know you are.
21 So you're going to -- you're going to provide
22 documents to me for when Actiq or Fentora prescriptions
23 were denied by the State of Oklahoma and the basis for
24 those denials?

25 MR. PATE: Yes, the documents that the State has

1 in its possession, we'll provide on that.

2 MR. BARTLE: Okay. No. 7. Now, I think we get
3 into the -- is this when you start saying...

4 MR. PATE: Yes.

5 MR. BARTLE: ...the limit it to 30?

6 So you're not going to provide any -- any
7 response to 7 through 14, based upon your assertion that
8 it's over the 30-interrogatory limit; is that right? 7
9 through 16, I'm sorry.

10 MR. PATE: This is Drew. That's -- that's
11 correct at this time.

12 And, look, if you guys have a proposal that you
13 want us to consider, for how to address discovery limits,
14 if you all want to revisit that -- you know, Steve, I
15 know, had thrown out some ideas at the hearing at one
16 point -- then we will, of course, consider any proposal
17 that you have and get back to you on it, but that's our
18 position right now.

19 MR. BARTLE: But you wouldn't consider those
20 proposals then, Drew. Why would you consider them now?

21 MR. PATE: I don't recall ever getting an actual
22 proposal from you guys on discovery limits, other than,
23 "We get to issue 30 per subsidiary," which that proposal
24 didn't work for us.

25 If -- if I missed a propose- -- an actual

1 proposal of how to deal with joint interrogatories and
2 discovery limits, other than that, then I apologize,
3 and -- and present it -- please send it to me, but I don't
4 think there was, ever, an actual proposal, other than
5 "every single defendant entity and subsidiary,
6 wholly-owned or operated or not, gets its own set of 30
7 interrogatories," regardless of whether you all submit
8 them jointly or not.

9 MR. BARTLE: Well, Steve did give -- I mean,
10 Steve did -- Steve did make a proposal on the record and
11 you guys responded, I believe, that we're -- that the 13
12 defendants are entitled to 30 and you're entitled to 30,
13 as the State.

14 I don't even think there was any indication at
15 that hearing that you guys would even consider that and
16 Judge Hetherington said he's going to leave well enough
17 alone.

18 MR. PATE: I think what the judge said is if
19 our -- I'm paraphrasing, obviously, but our view of that
20 hearing was, if we believe that there were joint requests,
21 then once they hit their limits, in you all -- in your
22 view, then make your objection and we can take it up then.

23 And all I'm telling you is that if you all have
24 a different proposal for us to consider, if you'd like us
25 to consider about how to deal with limits, we will --

1 we'll do that.

2 I don't know what you mean by 30 -- if you're
3 just saying -- if what you just said, Harvey, was 30 for
4 each of the defendants, then, yeah, we don't agree with
5 that, 30 -- where each subsidiary entity gets its own set
6 of 30. So if that's your proposal --

7 MR. BARTLE: So you oppose --

8 MR. PATE: -- that's -- you're right, we don't
9 agree with that and you can file a motion. If you all
10 have something else for us to consider, then we'll do
11 that.

12 MR. BARTLE: So --

13 MR. PATE: This --

14 MR. BARTLE: I said that was what the position
15 was at the last hearing, when you guys said we get, as
16 collective defendants, 30, total, 13 defendants get 30,
17 total, interrogatories, and then you get 30 for the State.

18 MR. PATE: No, that's not -- no, that was never
19 our proposal. Our proposal was that each family get 30:
20 Teva gets 30, Purdue gets 30 and Janssen gets 30. And
21 that's the same position we've taken in these responses,
22 even though, in our view, you guys have all -- as we state
23 in our objections -- served more than 30.

24 MR. BARTLE: Okay.

25 MR. LAFATA: Harvey, may I -- this is Paul. May

1 I clarify a question with, Drew?

2 MR. BARTLE: Yes.

3 MR. LAFATA: Drew, you used a -- you referred a
4 couple of times to "joint interrogatories" and I wasn't
5 sure if I understood the same thing you did, when you're
6 using that term.

7 Will you explain what you mean when you use the
8 term "joint interrogatory"?

9 MR. PATE: Sure. We mean joint interrog- --
10 this is Drew. We mean joint interrogatories in the same
11 sense that -- I think it was Steve described them at
12 that -- at that hearing, which are, basically,
13 interrogatories that, in our view, apply across all the
14 defendants, where you're not asking about something
15 specific to a defendant and you all are, you know, working
16 on them together to send an interrogatory -- for an answer
17 that applies to all of the -- all of the defendants.

18 Which you can do. We have no problem with you
19 sending us a joint interrogatory. And I think we've
20 answered all of the ones that -- that you have sent, until
21 we got more than 30.

22 But that's -- that's how we view a joint
23 interrogatory.

24 MR. LAFATA: That's helpful. Thank you.

25 MR. BARTLE: All right. Well, I don't think I

1 have anything else. Thanks, everybody. I've got to run.

2 Thanks, everybody, for taking the time to today
3 and -- and we'll see you in a week or two -- or, I guess,
4 three weeks, we'll see you.

5 MR. PATE: Okay. Thanks, everyone.

6 MR. BRODY: Thanks, everyone.

7 MR. BARTLE: All right. Thanks.

8 (The Meet-and-Confer Conference Call concluded
9 at 11:44 a.m., CST)

10 (Time on the record: 1 hour, 8 minutes.)

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, BETH A. MCGINLEY, CSR for the State of
Oklahoma, certify that the MEET-AND-CONFER CONFERENCE CALL
AMONG COUNSEL was taken by me in stenotype and thereafter
transcribed and is a true and correct transcript of the
proceedings; that the Meet-and-Confer Conference was taken
on the 8th day of June, 2018, via conference call among
the attorneys, and at the GableGotwals Law Firm, One
Leadership Square, 15th Floor, 211 North Robinson,
Oklahoma City, Oklahoma; that I am not an attorney for nor
a relative of any party, nor otherwise interested in this
action.

Witness my hand and seal of office on this the
9th day of June, 2018.

Beth A. McGinley, CSR
Oklahoma CSR No. 357
Expires December 31, 2018

EXHIBIT D

**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.,
MIKE HUNTER,
ATTORNEY GENERAL OF OKLAHOMA,

Plaintiff,

vs.

Case No. CJ-2017-816

PURDUE PHARMA L.P., et al,

Defendants.

**DEFENDANT JANSSEN PHARMACEUTICALS, INC.'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF**

Pursuant to 12 O.S. § 3234, Defendant Janssen Pharmaceuticals, Inc. (“Janssen”) requests that the Plaintiff State of Oklahoma (“the State”) respond to Janssen within 30 days to this request to produce the below-described documents which are in the State’s possession, custody, or control.

INSTRUCTIONS

1. Unless otherwise set forth, the documents requested include all documents created within the Relevant Time Period and continuing through the date of this request.
2. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.
3. You should produce electronically stored information (“ESI”) and hardcopy documents in a single-page TIFF-image format with extracted or OCR text and associated metadata—a standard format in e-discovery—known as TIFF-plus. Produce electronic spreadsheets (e.g., Excel), electronic presentations (e.g., PowerPoint), desktop databases (e.g., Access), and audio or video multimedia in native format with a slip sheet identifying Bates labels and confidentiality designations.

4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.

5. This request is continuing in character, and Janssen requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.

6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:

- a. The date of the document;
- b. The author of the document;
- c. The recipient of the document;
- d. All persons to whom copies of the document have been furnished;
- e. The subject matter of the document;
- f. The file in which the document is kept in the normal course of business;
- g. The current custodian of the document; and
- h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for Janssen in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

1. "Claim" is any request for payment or reimbursement.
2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Complaint, e.g., ¶¶3, 22, 51, 67, 122.
3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.
4. "Complaint" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.
5. "Defendants" are the individual Defendants named in the Complaint.
6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.
7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other Electronically

Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.

8. “Drug Utilization Review Board” is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.

9. “Educational Activity” refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.

10. “Electronically Stored Information” is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term “employee” includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. “Healthcare Professional(s),” “Health Care Provider(s)” or “HCP(s)” is any person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any person or animal.

13. “Key Opinion Leader(s)” or “KOL(s)” is used herein consistent with its meaning in the Complaint, ¶58.

14. “Medication Assisted Treatment” is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

15. “Medical Necessity” has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

16. "Oklahoma Agency" or "Oklahoma Agencies" collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

17. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a patient's brain or body to produce an analgesic effect.

18. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

19. "Person(s)" is any natural or legal person.

20. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, person or persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those

drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

21. “Prior Authorization” is any program that implements scope, utilization, or product based controls for drugs or medications.

22. “Program(s)” is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

23. “Relevant Time Period” means January 1, 2007 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side’s discovery requests in this action.

24. “Relevant Medication(s)” includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to opioid receptors in a Patient’s brain or body to produce an analgesic effect, whether or not listed in the Complaint, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

25. “Third-Party Group(s)” is used herein consistent with its meaning in the Complaint, including any “seemingly unaffiliated and impartial organizations to promote opioid use.” Complaint, ¶¶58, 63, 72.

26. "Vendor" means any third-party claims administrator, pharmacy benefit manager, HCP, or person involved in overseeing, administering, or monitoring any Program.

27. "You," "Your," "State," "Oklahoma," and "Plaintiff" refer to the sovereign State of Oklahoma and all its departments, agencies, and instrumentalities, including current and former employees, any Vendor, and other persons or entities acting on the State's behalf.

28. The words "and" and "or" shall be construed conjunctively as well as disjunctively, whichever makes the request more inclusive.

29. "Any" includes "all" and vice versa.

30. "Each" includes "every" and vice versa.

31. The term "including shall be construed to mean "including but not limited to."

32. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All Documents, Communications, and Claims identified, referred to, or relied upon in Your answers to Interrogatories served by any Defendant.

2. All minutes, transcripts, agendas, notes, monographs, dossiers, analyses, or other documents relating to meetings of the Drug Utilization Review Board or any P & T Committee, formulary committee, or other equivalent committee(s) or group(s) acting on Your behalf regarding any of the Relevant Medications, including any document containing a discussion relating to (a) the formulary status of the Relevant Medications, (b) restrictions on the purchase, coverage, reimbursement, utilization, use, or prescription of the Relevant Medications, or (c) the safety, efficacy, economic, or other concerns related to any of the Relevant Medications.

3. All Communications with physicians, providers, Health Care Providers, plan sponsors, Medicaid beneficiaries, beneficiaries of any Program, or pharmacies relating to the Relevant Medications.

4. All Documents and Communications concerning statistics relating to addiction, abuse, or overdose relating to the Relevant Medications in the State of Oklahoma, including but not limited to Documents and Communications relating to any evaluation, assessment, analysis, modeling, or review of any financial or economic impact associated with addiction, abuse, or overdose relating to the Relevant Medications.

5. All Documents and Communications relating to any educational efforts You or anyone acting on Your behalf sponsored or engaged in pertaining to the Relevant Medications.

6. Participant level claims data showing the full Medicaid or other Program claims history for prescription medications and other health care services submitted to Medicaid or any other Program, whether reimbursed or not, for all patients who received a prescription for any Relevant Medication, including data sufficient to show the price, Medicaid or other Program payments, co-payments, deductibles, rebates, discounts or any other offsets or adjustments to the price paid by You for any Relevant Medication.

7. All Documents and Communications with or relating to any Key Opinion Leader or Third-Party Group whom You claim communicated or consulted with, or was organized, retained, contracted, sponsored, funded, or controlled, in whole or in part, by any Defendant, including but not limited to the Key Opinion Leaders and Third-Party Groups identified in the Complaint.

8. All Documents and Communications concerning Opioids and misuse, diversion, abuse, addiction, overdose, or death, including Communications and Documents provided or made

available by the State of Oklahoma, the Oklahoma Attorney General, or any Oklahoma Agency or Program to any Person, Patient, or Health Care Provider that discuss substance abuse, diversion, prescribing practices, prescription safety, Opioids, or the treatment of pain, including but not limited to any Documents or Communications for which you provided grants, sponsorships, or other funding.

9. All Documents and Communications relating to Your investigation and/or enforcement of violations of laws governing the marketing of Relevant Medications and/or the use, prescribing, or request for reimbursement for prescriptions for any Relevant Medication, including documents sufficient to identify any Person arrested, indicted, charged, fined, or otherwise penalized for any activity related to the use, prescribing or request for reimbursement of any Relevant Medication.

Dated: January 12, 2018

By: /s/ Charles C. Lifland *CC*
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Pharmaceuticals, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2018, I caused a true and correct copy of the following:

**DEFENDANT JANSSEN PHARMACEUTICALS, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF**

to be served by U.S. mail upon the counsel of record listed on the attached Service List.

/s/


Jennifer D. Cardelus

SERVICE LIST

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Inc., Actavis LLC, and Actavis Pharma, Inc. f/k/a/
Watson Pharma, Inc.*

EXHIBIT E

**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.,
MIKE HUNTER,
ATTORNEY GENERAL OF OKLAHOMA,

Plaintiff,

vs.

Case No. CJ-2017-816

PURDUE PHARMA L.P., et al,

Defendants.

**DEFENDANT JOHNSON & JOHNSON'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS FROM PLAINTIFF**

Pursuant to 12 O.S. § 3234, Defendant Johnson & Johnson (“J&J”) requests that the Plaintiff State of Oklahoma (“the State”) respond to J&J within 30 days to this request to produce the below-described documents which are in the State’s possession, custody, or control.

INSTRUCTIONS

1. Unless otherwise set forth, the documents requested include all documents created within the Relevant Time Period and continuing through the date of this request.
2. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.
3. You should produce electronically stored information (“ESI”) and hardcopy documents in a single-page TIFF-image format with extracted or OCR text and associated metadata—a standard format in e-discovery—known as TIFF-plus. Produce electronic spreadsheets (e.g., Excel), electronic presentations (e.g., PowerPoint), desktop databases (e.g., Access), and audio or video multimedia in native format with a slip sheet identifying Bates labels and confidentiality designations.

4. These requests are directed toward all documents known or available to the State, including records and documents in its custody or control or available to it upon reasonable inquiry. Your response must state, with respect to each item or category, that inspection and related activities shall be permitted, unless the request is objected to, in which event you must state your reasons for objecting. If you object to part of an item or category, specify the part.

5. This request is continuing in character, and J&J requests that you amend or supplement your response in accordance with the Oklahoma Rules of Civil Procedure if you obtain new or additional information.

6. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality, or trade secret, or for any other reason or objection, provide a description of the document being withheld which includes the following:

- a. The date of the document;
- b. The author of the document;
- c. The recipient of the document;
- d. All persons to whom copies of the document have been furnished;
- e. The subject matter of the document;
- f. The file in which the document is kept in the normal course of business;
- g. The current custodian of the document; and
- h. The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

7. Where you have a good faith doubt as to the meaning or intended scope of a request, and your sole objection would be to its vagueness, please contact counsel for J&J in advance of asserting an unnecessary objection. The undersigned counsel will provide additional clarification or explanation as needed.

DEFINITIONS

1. "Claim" is any request for payment or reimbursement.
2. The term "chronic pain" is used herein consistent with the meaning of "non-cancer related pain" or "long term pain" as those terms are used in the Complaint, e.g., ¶¶3, 22, 51, 67, 122.
3. "Communication(s)" is any unilateral, bilateral, or multilateral assertion, disclosure, statement, conduct, transfer, or exchange of information or opinion, including omissions, however made, whether oral, written, telephonic, photographic, or electronic.
4. "Complaint" refers to your Original Petition filed June 30, 2017, and exhibits, as well as any subsequent amendments.
5. "Defendants" are the individual Defendants named in the Complaint.
6. "Document(s)" is used in the broadest sense permissible under 12 O.S. § 3234(A)(1), and includes without limitation "writings," "recordings," "photographs," "original[s]," "duplicate[s]," "image[s]," and "record[s]," as those terms are set forth in 12 O.S. § 3001.
7. The term "document(s)" includes all drafts and all copies that differ in any respect from the original; information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations; all other Electronically

Stored Information; and the file-folder, labeled-box, or notebook containing the document, as well as any index, table of contents, list, or summaries that serve to organize, identify, or reference the document.

8. “Drug Utilization Review Board” is used herein consistent with its meaning in Section 317:1-3-3.1 of the Oklahoma Administrative Code.

9. “Educational Activity” refers to publications, programs, continuing medical education, or other forms of communicating unbranded, educational information about Opioids or treatment of chronic pain.

10. “Electronically Stored Information” is used in the broadest sense permissible by the Oklahoma Rules of Civil Procedure and includes without limitation all electronic data (including active data, archival data, backup data, backup tapes, distributed data, electronic mail, forensic copies, metadata, and residual data) stored in any medium from which information can be obtained.

11. The term “employee” includes all current and former employees, independent contractors, and individuals performing work as temporary employees.

12. “Healthcare Professional(s),” “Health Care Provider(s)” or “HCP(s)” is any person who prescribes, administers, or dispenses any Relevant Medication or Medication Assisted Treatment to any person or animal.

13. “Key Opinion Leader(s)” or “KOL(s)” is used herein consistent with its meaning in the Complaint, ¶58.

14. “Medication Assisted Treatment” is the use of medications with counseling and behavioral therapies to treat substance abuse disorders and prevent Opioid overdose.

15. “Medical Necessity” has the same meaning as defined in Section 317:30-3-1(f) of the Oklahoma Administrative Code.

16. "Oklahoma Agency" or "Oklahoma Agencies" collectively refers to any State entity involved in regulating, monitoring, approving, reimbursing, or prosecuting the prescription, dispensing, purchase, sale, use, or abuse of controlled substances in Oklahoma, including, but not limited to, the Oklahoma Office of the Governor, Oklahoma Legislature, Oklahoma Office of the Attorney General, Oklahoma Department of Corrections, Oklahoma Department of Public Safety, Oklahoma State Department of Health, Oklahoma State Bureau of Investigation, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma Health Care Authority, Oklahoma State Board of Dentistry, Oklahoma State Board of Medical Licensure and Supervision, Oklahoma State Board of Nursing, Oklahoma State Board of Pharmacy, Oklahoma State Board of Veterinary Medical Examiners, Oklahoma Workers' Compensation Commission, Office of the Medical Examiner of the State of Oklahoma, and their respective predecessors, supervisory and subordinate organizations, and current or former employees.

17. "Opioid(s)" refers to FDA-approved pain-reducing medications consisting of natural or synthetic chemicals that bind to receptors in a patient's brain or body to produce an analgesic effect.

18. "Patient(s)" is any human being to whom an Opioid is prescribed or dispensed.

19. "Person(s)" is any natural or legal person.

20. Pharmacy and Therapeutics Committee ("P & T Committee") or formulary committee means any committee, group, board, person or persons with responsibility for determining which drugs will be placed on any prescription drug formulary created, developed or utilized by the State of Oklahoma or any Program, the conditions and terms under which the State of Oklahoma or any Program will authorize purchase of, coverage of, or reimbursement for those

drugs, who can prescribe specific drugs, policies and procedures regarding drug use (including pharmacy policies and procedures, standard order sets, and clinical guidelines), quality assurance activities (e.g., drug utilization review/drug usage evaluation/medication usage evaluation), adverse drug reactions/medication errors, dealing with product shortages, and/or education in drug use.

21. “Prior Authorization” is any program that implements scope, utilization, or product based controls for drugs or medications.

22. “Program(s)” is every program administered by an Oklahoma Agency that reviews, authorizes, and determines the conditions for payment or reimbursement for Opioids, including, but not limited to, the Oklahoma Medicaid Program, as administered by the Oklahoma Health Care Authority, and the Oklahoma Workers Compensation Commission.

23. “Relevant Time Period” means January 1, 2007 to the present, or such other time period as the parties may later agree or the Court determines should apply to each side’s discovery requests in this action.

24. “Relevant Medication(s)” includes any and all drugs, branded or generic, consisting of natural or synthetic chemicals that bind to opioid receptors in a Patient’s brain or body to produce an analgesic effect, whether or not listed in the Complaint, including, but not limited to, codeine, fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol.

25. “Third-Party Group(s)” is used herein consistent with its meaning in the Complaint, including any “seemingly unaffiliated and impartial organizations to promote opioid use.” Complaint, ¶¶58, 63, 72.

26. "Vendor" means any third-party claims administrator, pharmacy benefit manager, HCP, or person involved in overseeing, administering, or monitoring any Program.

27. "You," "Your," "State," "Oklahoma," and "Plaintiff" refer to the sovereign State of Oklahoma and all its departments, agencies, and instrumentalities, including current and former employees, any Vendor, and other persons or entities acting on the State's behalf.

28. The words "and" and "or" shall be construed conjunctively as well as disjunctively, whichever makes the request more inclusive.

29. "Any" includes "all" and vice versa.

30. "Each" includes "every" and vice versa.

31. The term "including shall be construed to mean "including but not limited to."

32. The singular of each word includes its plural and vice versa.

DOCUMENTS REQUESTED

1. All Documents and Communications that identify, describe, quantify, evidence, or relate to any loss, damage, or harm for which you seek monetary relief, penalty, fine, or any other form of relief from each Defendant.

2. All Documents reviewed by, relied on, or provided to the Drug Utilization Review Board or the members of any P & T Committee, formulary committee, or other equivalent committee(s) or group(s) acting on Your behalf regarding any of the Relevant Medications.

3. All Documents and Communications that You or anyone acting on Your behalf considered, used, consulted, or relied on in determining the extent to which any Program would provide, restrict, or deny coverage for any Relevant Medication.

4. All Documents and Communications identifying, referring to, or concerning any Patients whom You allege received, obtained, or were harmed by a prescription for a Relevant Medication that You claim was unnecessary, excessive, improper, and/or not a Medical Necessity.

5. All Documents and Communications relating to any studies, reviews, or data maintained by You, any of Your divisions, subdivisions, or agencies, or anyone acting on your behalf relating to the Relevant Medications, including without limitation cost-benefit studies, pharmacoeconomic studies, studies regarding overdoses, misuse, abuse, or prescription drug use for Opioids, utilization reviews, and any analyses or plans related to findings from any of the foregoing studies or reviews.

6. All Documents and Communications relating to Medicaid or other Program beneficiaries switching between any of the Relevant Medications and any other drug or therapy.

7. All Documents and Communications describing the Programs, including Documents and Communications that describe the funding, changes in prescription drug coverage, and budgeting for the Programs.

8. All Documents and Communications with or relating to any Defendant concerning Opioids or any Educational Activity.

9. All Documents and Communications relating to any effort by You or on Your behalf to identify, treat, reduce, or prevent Opioid abuse and illicit Opioid prescribing and dispensing.

10. All Documents and Communications: (1) that caused or contributed to Your payment or reimbursement of any prescription for one of Defendants' Opioids pursuant to the Oklahoma Medicaid Program; or (2) which states income or expense and was used to determine a rate of payment pursuant to the Oklahoma Medicaid Program for a prescription for one of

Defendants' Opioids; or (3) made as part of an application for payment for one of Defendants' Opioids by any person from the Oklahoma Medicaid Program or its fiscal agents.

Dated: January 12, 2018

By: /s/ Charles C. Lifland /JC
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2018, I caused a true and correct copy of the following:

DEFENDANT JOHNSON & JOHNSON'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS FROM PLAINTIFF

to be served by U.S. mail upon the counsel of record listed on the attached Service List.

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