



IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

STATE OF OKLAHOMA, et al., MIKE
HUNTER, ATTORNEY GENERAL OF
OKLAHOMA,

Plaintiff,

v.

PURDUE PHARMA L.P., et al.

Defendants.

FILED
AUG 17 2018

In the office of the
Court Clerk MARILYN WILLIAMS

CJ-2017-816

Honorable Thad Balkman

Special Discovery Master:
William C. Hetherington, Jr.

PURDUE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Purdue Pharma, L.P. and The Purdue Frederick Co. (collectively "Purdue") respectfully move to compel discovery pursuant to 12 Okla. Stat. § 3237. Purdue seeks an order that (i) requires the State within 30 days to comply with the Special Discovery Master's April 25, 2018 Order compelling the State to produce documents in response to discovery requests by The Purdue Frederick Co. and (ii) compels the State to produce documents responsive to a document request by Purdue Pharma L.P.

The Purdue Frederick Co. seeks an order requiring the State to substantially comply with the Special Discovery Master's April 25, 2018 Order to produce documents responsive to its First Requests for Production Nos. 1, 5, and 6, which include the processes and criteria used by the Oklahoma Healthcare Authority to determine whether a prescription should be reimbursed as well as documents the State used to determine whether to reimburse prescription claims. The State has not yet complied. Therefore The Purdue Frederick Co. respectfully requests the Court set a date certain, 30 days from the entry of its order, by which production must be substantially completed.

Purdue Pharma L.P. further moves to compel the State to produce documents responsive to its First Request for Production No. 3, which seeks documents concerning the State's

monitoring of prescribers for potentially improper prescriptions of opioids medications. These documents are relevant and discoverable concerning the State's allegations of a public nuisance, the State's knowledge of misprescriptions and actions taken (or not taken) to address them, and alternative causes of misprescription of opioid medications.

As Purdue has previously noted, the parties are working on a highly accelerated timeline, and the State's protracted delays and trickle of documents undermine the timeline set forth by the Court. The State's delays prejudice Purdue's ability to prepare its case, take depositions, prepare for the expert deadlines, and move forward in the discovery process.

FACTUAL BACKGROUND

Purdue served document requests on January 12, 2018 and *still* has received very few documents from the State – the vast majority of its production is copies of documents from non-parties, rather than documents from the State. After efforts to confer with the State failed, Purdue had no choice but to move to compel, and on April 25, 2018, the Special Discovery Master granted Purdue's motion. Among other rulings, the Special Discovery Master ordered the State to produce the documents responsive to the following requests by The Purdue Frederick Co.:

1. All Documents and Communications related to any formulary utilized by the Oklahoma Health Care Authority or any Vendor for determining reimbursement eligibility or criteria, including Documents and Communications related to formulary tier structure, formulary position, copayment obligations, and any restrictions on or prerequisites to the coverage, reimbursement, purchase, or prescription of the Relevant Medications.
5. All Documents and Communications reflecting, identifying, or relating to each Claim submitted under any Program for reimbursement of an Opioid prescribed for chronic pain, including but not limited to adjudication and reimbursement claims data, Documents reviewed or relied upon in evaluating or deciding whether to pay for or reimburse the Claim, Communications with claimants, Health Care Providers, or Vendors, and paper or electronic claim forms relating to such Claims.

6. All Documents and Communications related to methods, criteria, information, reports, studies, and Person(s) involved in or utilized to determine whether a claim for an Opioid prescription involved a Medical Necessity and was otherwise eligible for payment.

Those discovery requests sought production of the State's methods to approve prescription medications as well as documents the State relied upon to decide whether to reimburse claims, including the claims at issue in this case. The State has not produced the responsive documents.

Purdue Pharma L.P. also served document requests on January 12, 2018. Request No. 3 requests the following:

3. All Documents and Communications relating to any system or service used by You or anyone acting on Your behalf to monitor prescribing activities or potentially suspicious prescribing of the Relevant Medications.

The documents requested include the State's efforts to track drug prescriptions through programs such as the State's Prescription Monitoring Program ("PMP"), which is a program implemented by Oklahoma pursuant to Okla. Stat. § 63-2-309A (Oklahoma's "Anti-Drug Diversion Act"). Under the program, physicians prescribing opioid drugs must report information relating to the prescriber, the drug being prescribed, and the recipient to a central database to prevent prescription drug abuse. The State has failed to produce responsive documents.

The State's production to date appears to be about 400,000 pages, over 373,000 of which appears to come from non-parties, not from the State's own files. A review of the custodial files of the documents that have been produced indicates that various divisions of the State that are key repositories for relevant documents have provided few, if any, documents. For example, the entire Oklahoma Bureau of Narcotics, responsible for tracking all prescriptions of opioids in Oklahoma, appears to have produced only *fourteen documents*. The Oklahoma Health Care Authority Board, the likely source of documents related to prescription reimbursement

eligibility, produced only *three documents*. In comparison, Purdue has produced nearly *3.5 million pages* of documents thus far.

Purdue sought to meet and confer with State's counsel on the issues herein but received no response.

ARGUMENT

Seven months have elapsed since Purdue served document requests on the State, and it appears that the State has produced about 400,000 pages of documents, over 373,000 of which do not come from the State's own files but from non-parties. The State cannot rely on documents it obtains from non-parties to take the place of collecting, searching, and producing its own documents. It appears that after more than seven months the State has still not properly attended to its discovery obligations in this case. This result comes despite motions to compel the State to produce documents and repeated meet-and-confer discussions and hearings, culminating in an order by the Special Discovery Master to produce the discovery. Yet the State remains seriously deficient in meeting its discovery obligations, whether measured by the Special Discovery Master's Order or 12 Okla. Stat. § 3226(B). The State's stonewalling approach to its discovery and slow trickle of documents is not compatible with the schedule and has continued to cause unfair prejudice to Purdue. In order to encourage the State to take its discovery obligations seriously, Purdue respectfully requests that the Special Discovery Master require substantial compliance with his April 25, 2018 Order by a date certain and compel the production of additional documents.¹

¹ Purdue reserves the right to move this Court to revisit production of documents in categories that the State did not object to producing but subsequently fails to produce, or categories that the State was ordered by the Discovery Master to produce but did not do so. This motion is presently focused on to the categories identified herein as an initial matter.

The Purdue Frederick Co.'s Request No. 1: The Special Discovery Master has ordered the State to produce documents from the Oklahoma Health Care Authority or its vendor to determine eligibility or other criteria for reimbursements for a prescription medication. Nevertheless, the State appears to have produced ***only three documents*** from the Oklahoma Health Care Authority, none of which appears to address the subject of the Order. The documents ordered to be produced are in the State's possession and control and should be promptly produced.

The Purdue Frederick Co.'s Request No. 5: The Special Discovery Master has ordered the State to produce documents relating to claims submitted to the State for opioid prescriptions, including the State's claims data, documents reviewed to assess and pay those claims, and communications about those subjects. While the State has produced some claims data, other data remain unproduced without explanation. Moreover, the State does not appear to have produced the documents that the State relied upon to determine whether to reimburse claims for prescription opioid medications. Purdue needs the State's documents to see how the State assessed the validity of these prescriptions and determined that they were proper, medically appropriate, and warranting payment by the State. The Oklahoma Health Care Authority, however, appears to have produced ***only three documents*** to date, none of which contain the information necessary to determine how or why the State alleges certain prescriptions to be improper. The documents ordered to be produced are in the State's possession and control and should be promptly produced.

The Purdue Frederick Co.'s Request No. 6: The Special Discovery Master has ordered the State to produce its documents and communications regarding its evaluation of an opioid prescription for reimbursement, including how it determines whether a prescription is medically necessary. Despite the April 25, 2018 Order, it does not appear that the State has

produced the documents, even though they would be at the core of the State's allegations concerning the reimbursement of prescriptions and Purdue's defenses to those allegations.

Purdue Pharma, L.P.'s Request No. 3: Purdue Pharma, L.P. requested documents relating to the State's efforts to track drug prescriptions through such programs as the Prescription Monitoring Program ("PMP"), which utilized a database that tracks drug prescriptions by patient, prescriber, drug, and amount, or the Oklahoma Schedule II Abuse Reduction ("OSTAR") program which also tracked prescriptions electronically. These programs, among others, allowed the State to track and identify doctors with suspicious prescription histories indicating they may have been writing improper prescriptions, as well as to track individuals engaging in "doctor shopping" to mislead doctors into prescribing more medications than intended. These programs are controlled by the Oklahoma Bureau of Narcotics and are directly tied to questions about the State's awareness of prescription opioid abuse, when the State was aware, and what if anything the State did about it.

The PMP data is maintained by the State and, by law, is uniquely accessible to the State. The Oklahoma legislature expressly granted the Oklahoma Attorney General access to the PMP database "in furtherance of criminal, *civil* or administrative investigations or prosecutions." Okla. Stat. § 63-2-309D(B) (emphasis added). The prescription tracking data is relevant, within the custody or control of the State, and should be produced promptly.

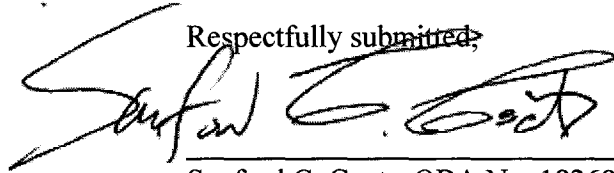
CONCLUSION

The State is grossly deficient in producing documents in this case. The State has not complied with the Special Discovery Master's order to produce documents or produced documents in response to Purdue's document requests that are long overdue. The State has these documents and should produce them promptly. Accordingly, Purdue requests an order that (i) within 30 days the State substantially complete its production of documents in

response to The Purdue Frederick Co. First Requests for Production Nos. 1, 5, and 6 and (ii) compelling the State to produce documents responsive to Purdue Pharma's Request for Production No. 3.

DATED: August 17, 2018.

Respectfully submitted,



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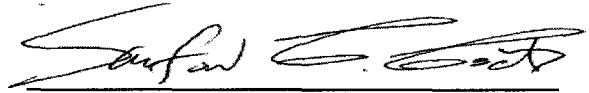
*Counsel for Purdue Pharma L.P.,
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2018, I caused a true and correct copy of the following:

PURDUE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

to be served via email upon the counsel of record listed on the attached Service List.



Sanford E. Cook

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