



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  
Judge Thad Balkman

- (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., )

Special Master:  
William Hetherington

Defendants. )

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }

FILED

NOV 20 2018

In the office of the  
Court Clerk MARILYN WILLIAMS

**SUPPLEMENTAL BRIEF IN SUPPORT OF STATE’S EMERGENCY MOTION FOR  
SANCTIONS AGAINST JOHNSON & JOHNSON DEFENDANTS**

On November 15, 2018, the State sought sanctions against the Johnson & Johnson Defendants (“J&J”) for, among other things, failing to produce a document that essentially admits they defrauded the American people for over a decade (the “Motion”). Since that date, J&J has violated two direct orders from this Court that bear directly on that Motion. Those violations include:

First, as previously described in the November 15<sup>th</sup> Motion, the Court ordered J&J to produce a witness fully prepared to testify about J&J's role in the Pain Care Forum on November 16<sup>th</sup>. J&J did not follow the Court's instruction and as a result the State was not able to take the deposition as ordered—actually as ordered for at least the third time—on Friday November 16<sup>th</sup>.

Second, during the November 9<sup>th</sup> hearing in which this Court compelled J&J to produce this witness, the Court also instructed J&J not to instruct its witnesses not to answer questions and held that the Court would view a failure to follow this instruction as obstruction. On November 15<sup>th</sup>, during a deposition, J&J instructed a witness not to answer a question to read part of the document at issue in the Motion.

As explained below, J&J intentionally obstructed sworn testimony because that testimony would end any defense J&J hopes to mount in this case. J&J has reached a new level of obstruction even beyond what the State originally raised in its Motion. This conduct is part of a recidivist pattern in this case. Lesser sanctions and admonishments have not worked. Thus severe sanctions, including striking J&J's defenses are necessary.

## **I. ARGUMENT**

To understand the gravity of the situation in which J&J has put itself, some background context is necessary.

J&J claims that it is a company that exists to help others. Indeed, on its website, J&J says this about itself:

That's why for more than 130 years, we have aimed to keep people well at every age and every stage of life. Today, as the world's largest and most broadly based healthcare company, we are committed to using our reach and size for good.

<https://www.jnj.com/about-jnj>. That statement simply not true. Similarly, J&J's "credo" claims:

We are responsible to the communities in which we live and work and to the world community as well. We must be good citizens – support good works and charities and bear our fair share of taxes.

<https://www.jnj.com/credo/>. That credo also is demonstrably false.

The truth is quite different. The truth is that J&J worked hand in hand with federally convicted conspirators Cephalon and Purdue to cause the opioid crisis. The truth is that J&J was the drug dealer that supplied the market for opioids in this country for years. For more than fifteen years, J&J has been a collaborative partner with Purdue, Cephalon, Endo, and other manufacturers in a global conspiracy to convince everyone—states, the media, doctors and patients, that opioids are unlikely to cause addiction. This conspiracy took many forms, not the least of which was a highly secretive cartel known as the Pain Care Forum. These competitors collaborated in the Pain Care Forum for almost two decades. They literally called themselves collaborative partners. As J&J's own representative acknowledged, one meaning of the word “collaborate” is to cooperate with or willingly assist an enemy.<sup>1</sup> J&J and its collaborators conspired with one another, and many other groups that they funded, sponsored and/or funded, to create a belief that Americans were suffering with extensive chronic pain that we had a moral obligation to treat with opioids—and that those opioids were unlikely to actually cause addiction.

Why did J&J join forces with its competitors for such a conspiracy?

Because it was the kingpin of the American opioid cartel. Literally. J&J has sat idly by and watched as Purdue and Cephalon admitted that they violated federal laws in the marketing of their opioids. But, hidden from public sight was the fact that J&J was the kingpin supplying the product for many companies selling opioids in the United States. For the vast majority of the opioid epidemic in this country, J&J was the primary supplier of the opioid APIs found in opioids

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/collaborate> at 2.

manufactured by its competitors. J&J's Tasmanian Alkaloids grew the poppies. And J&J used its direct access to its own high purity raw narcotic materials so that J&J's Noramco could create and sell pharmaceutical ingredients that comprised its competitors' opioid analgesics—including oxycodone. See <https://www.noramco.com/active-pharmaceutical-ingredients/>. That is why, even before its marquis opioid product, Nucynta, hit the market, and why even after its prior marquis opioid, Duragesic, had gone generic, J&J continued funding and supporting its fellow conspirators' efforts to increase and continue the prescribing of opioids. J&J profited as long as its collaborators, such as Purdue and Cephalon, continued to sell more opioids. The publicly available details alone now demonstrate the lies J&J told and the reason why.

There is much more to this story that J&J continues to hide by designating information confidential. Therefore, for purposes of this Motion, and so that J&J cannot hide the depths of its conspiracy from the public—and its obstruction of discovering the truth from this Court—the State is relying exclusively on publicly available and/or non-confidential information in this Supplement.

In 2006, J&J and cohorts, who are all member of the Pain Care Forum (“PCF”) collaborated to create and publish an Article titled the “Epidemic of Pain in America.” The document was over a hundred pages long and combined false statements made by the PCF itself as well as false statements in articles made by PCF individual members. This document lists “Professional Education: Fast Facts” including one that stated “[t]here are millions of people living with pain who are told by healthcare professionals that opioid medicines, one of the most powerful and effective class of medicines, are addictive and shouldn't be used.” Motion, Exhibit D at APF2100. This document was obtained from a source outside this litigation, and is not subject to the Protective Order in this case. In that document, J&J and its conspirators told the following lie:

“[a]ppropriate use of opioid medication (like oxycodone) is safe and effective and unlikely to cause addiction in people who are under the care of a doctor and who have no history of substance abuse.”

*Id.* at APF2103. This document was given to state and federal legislators and to the media.

Upon first glance, one might view it odd that the statement refers to oxycodone, which is the API in Purdue’s Oxycontin. But, of course, J&J’s Noramco made and sold oxycodone to J&J’s competitors. Thus, J&J collaborate with its partners to disseminate lies which further stimulated opioids sales generally.

J&J’s collaboration in a conspiracy to promote lies about the risk of opioid addiction is further seen when the article discusses *pseudoaddiction*. *Pseudoaddiction* is a bogus term. Literally. This is a made up term invented by Purdue to sell more opioids. This document stated that

even such behaviors as illicit drug use and deception can occur in the patient’s efforts to obtain relief. *Psuedoaddiction* can be distinguished from true addiction in that the behaviors resolve when pain is effectively treated.

*Id.* at APF2116.

J&J also collaborated with the other Defendants on the PCF to try to get Oklahoma and dozens of other states to adopt the Federation of State Medical Board’s Model Guidelines. These Model Guidelines also included a sham definition of *pseudoaddiction*. Pseudoaddiction, a lie invented by Purdue to convince doctors to ignore signs of addiction and instead prescribe the patient more drugs, was used liberally by the PCF in documents distributed in Oklahoma. Part of the conspiracy’s efforts to deceive states into adopting the FSMB guidelines was to include them in a book called Responsible Opioid Prescribing. That book was issued by the FSMB. The FSMB is a Pain Care Forum Member with J&J.

But the book itself also was funded by many PCF members including Purdue, Cephalon

and other PCF co-conspirators. As expected, the book is riddled with misrepresentations including an offensive and ridiculous table about what behavior indicates addiction versus pseudoaddiction. *See generally* Scott M. Fishman, M.D., *Responsible Opioid Prescribing A Physician's Guide* (2007). J&J did not stop there.

For example, the PCF conspirators wrote that the following conduct are behaviors that are LESS indicative that an opioid patient may be suffering from addiction:

- Hoarding medications;
- Stealing medications from others to use for herself;
- Using opioids to treat other symptoms;
- Aggressively asking doctors for more pills;
- Using more opioids than recommended; and
- Stating that she may start using street drugs.

*Id.* at 63.

This same book went on to state that conduct is only more indicative of addiction if, among other things, the patient:

- Actually buys those drugs from a street dealer;
- Tries to get opioids from more than one source;
- Becomes a pimp and uses money from his prostitutes to buy drugs;
- Forces someone else to have sex so he can get drugs as payment; and
- Performs sex himself to get drugs.

This book was widely disseminated in Oklahoma.

Shocking? Yes.

Ridiculous? Yes.

Lies? Yes.

Funded with assistance from the PCF members? Yes.

Widely distributed into the State of Oklahoma? Yes.

J&J collaborated with its PCF partners to get these statements and others into the public

domain for decades.

But as soon as the depth of the opioid epidemic that J&J and its co-conspirators created began to surface, J&J cut bait and ran. J&J ditched their marquis opioid, Nucynta, in 2015. Then, J&J ditched Noramco and Tasmanian Alkaloids in 2016. J&J removed itself from any ties connecting it to opioids.

And once that happened, J&J finally told the truth. Outside of this litigation, in a document that J&J's litigation team did not even know about—and thus had no opportunity to hide it or influence what it said. In this document, J&J admitted publicly, for the first time, that:

***ADDICTION is NOT unlikely when taking opioids;***

***ADDICTION in fact is LIKELY when taking opioids;***

***The LIKELIHOOD of ADDICTION exists even when opioids are taken under the care of a primary care physician; and***

***That LIKELIHOOD of ADDICTION is 25%.***

Motion, Exhibit E. These statements prove, once and for all, that everything J&J, Purdue, Cephalon, and the other PCF conspirators said about the addiction potential of opioids for the last two decades was a complete lie.

This document obliterates any defense J&J ever had regarding its prior false representations on the rate of addiction. Addiction is not unlikely. Addiction does not occur only when opioids are abused. J&J published a document admitting addiction occurs as often as 25% of the time when patients do everything right and take as prescribed. J&J hid the document from the State. J&J did not disclose it in discovery. The State found it on its own.

But it gets worse.

After hiding the document and failing to produce it, J&J defied the instruction this Court gave less than one week earlier. The Discovery Master previously admonished J&J during a

hearing on November 9, 2018 not to instruct witnesses not to answer questions:

**“And I certainly consider obstruction whenever an attorney tells a witness not to answer a question.”**

The Court’s instruction is consistent with the rules. Indeed, “a party may instruct a deponent not to answer only when necessary to preserve a privilege or work product protection, to enforce a limitation on evidence directed by the court, to present a motion under paragraph 2 of this subsection, or to move for a protective order under subsection C of Section 3226 of this title.” 12 O.S. §3230(E)(1).

Yet. Despite the Court’s admonishment, J&J did it anyway. In a recent deposition of a current J&J District Manager, the witness was asked to read a portion of the J&J Request for Proposal out loud:

By Counsel for the State (referring to document):

Q: Yes. If you can read that sentence for me, please.

Counsel for J&J:

I'm going to object and ask him not to read this out loud. We don't know where this document came from, who authored it or how it came to us today. If you'd like him to read a particular portion of this document and answer questions, that will be fine. But I'm going to instruct him not to read it, this, any portion of this out loud into the record.

Counsel for the State:

Why? I'm just asking him to read a sentence.

Counsel for J&J:

No. You're asking him to read it out loud into the record. You can ask him to read this and then ask him questions about it, **but I'm going to instruct him not to read it out loud into the record.**

Counsel for the State:

On what grounds.



Counsel for J&J:

Well, the grounds we are here for a discovery deposition. So you can ask him questions, but asking questions is different than giving someone instructions to make productions. *So I'm telling him not to read it. I'm instructing him not to read it out loud. We may disagree, but at this point that's going to be my instruction.*

This document is not privileged, nor did counsel assert that it was. This document was found on a website. And yet, on the record, J&J's Counsel claimed: "We don't know where this document came from, who authored it or how it came to us today." First, that is wrong. It is a J&J document and counsel for the parties had already conferred about J&J's failure to produce it. J&J and its lawyers know that this is their document. Second, it does not matter if you "know where a document came from" in response to a question to read a document out loud. J&J's lawyer could state an objection but then the question must be answered.

The reason for J&J's blatantly improper instruction is obvious. This document is critical to the case and contradicts J&J's (and other Defendants') statements that opioids have a low risk of addiction when taken under a doctor's supervision. Counsel's disavowal of this document and refusal to let witness read it intentionally infected the entire line of questioning.

Because of the significance of the document, J&J was willing to defy the Discovery Master's recent instruction and improperly instruct the witness not to answer. J&J is terrified of there being any actual sworn testimony about what this document says. J&J's continued lies and abusive litigation tactics must be stopped.

And this witness must be recalled so that the proper questions and answers can be given without interference by J&J's lawyers.

## **II. RELIEF REQUESTED**


J&J's blatant refusal to comply with the discovery process and this Court's Orders merit

severe sanctions. Therefore, the State reiterates its request for the sanctions sought in its original Motion. Further, regarding this document and the obstructed deposition, the State additionally requests that the Court order:

- 1) J&J must produce the author of the Request for Proposal and Mr. Flanary at the Cleveland County Courthouse with the Special Master presiding to allow both witnesses to provide full, unobstructed testimony on the RFP;
- 2) Provide an instruction to the jury that J&J did not produce the document, and then instructed witnesses not to testify about it once the State discovered it;
- 3) Order J&J not to instruct any witness to not answer a question related to this document or the Pain Care Forum unless the instruction is based upon a duly recognized privilege.

The State further respectfully requests that pursuant to 12 O.S. § 3237, the Court issue sanctions against J&J for its clear and repetitive violations of multiple Court Orders, the Oklahoma Discovery Code, and its abusive litigation practices.

Respectfully submitted,

  
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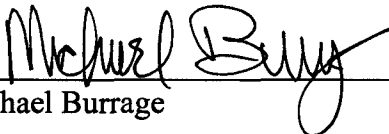
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