



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

PURDUE PHARMA L.P., et al.,

Defendants.

Case No. CJ-2017-816

Honorable Thad Balkman

Special Discovery Master of OKLAHOMA U.S.S.
William C. Hetherington, CLERK OF CLEVELAND COUNTY

FILED in The
Office of the Court Clerk

NOV 13 2018

PURDUE'S MOTION FOR CLARIFICATION

Purdue Pharma, L.P., Purdue Pharma Inc., and The Purdue Frederick Co. (collectively "Purdue") respectfully move for clarification of the Special Discovery Master's October 22, 2018 Order sustaining Purdue's October 4, 2018 Motion to Compel Witness Testimony from the Department of Corrections. Purdue's Motion sought to compel the State to produce a properly prepared *corporate representative witness*, pursuant to OKLA STAT. TIT. 12 § 3230(C)(5), to provide testimony on the Department of Corrections' standards, practices, and procedures for the diagnosis and treatment of pain and for the use of opioid medications. The State's designated witness, Clint Castleberry, was only prepared to testify as to the mere *existence* of standards, practices, and procedures, and lacked any knowledge as to their origin, revision, implementation, or operation.

Separately, on the same day, Purdue filed a Motion to Compel Production of Custodial Files in advance of the depositions of three Department of Corrections *fact witnesses*. While the State had already agreed to produce those fact witnesses for deposition, it had not produced their custodial files, which Purdue required in advance to prepare for their depositions. Purdue therefore moved to compel the production of their custodial files.

At oral argument, counsel for the State engaged in misdirection and conflated the issues in the two motions. Oct. 18 Hearing Tr. at 116:5-6 (Mr. Leonoudakis: “Now this [Motion to Compel Witness Testimony] does blend with the other motion you were talking about, the custodial files.”). As a result, the Special Discovery Master’s October 22 Order also combined the issues. See Oct. 22 Order at 5-6. In the portion of the Order addressing the Motion to Compel Witness Testimony, the Special Discovery Master ruled both that Purdue’s Motion was *sustained*, and *also* that:

Defendants are allowed to depose Joel McCurdy, Robin Murphy and Nate Brown to be scheduled within 30 working days of this Order. Prior to these depositions their Custodial Files are Ordered produced to Defendants in time for preparation.

Id.

Notably, the State had already agreed to produce those three employees for *fact witness* testimony. That was never in question. The purpose of Purdue’s Motion to Compel Witness Testimony, however, was to obtain testimony from a *corporate representative* who can bind the State on the noticed topic. While fact witness testimony is also important, only the testimony of a designated corporate representative can be attributed to the State on Purdue’s selected topic.

Given the Special Discovery Master’s ruling that Purdue’s Motion to Compel Witness Testimony was *sustained*, Purdue approached the State seeking to schedule a new corporate representative deposition with a properly prepared witness. The State refused, however, and provided an interpretation of the Special Discovery Master’s ruling that rendered it meaningless:

“[I]n sustaining Purdue’s Motion [to Compel Witness Testimony], he ordered the three noticed depositions of individuals employed at DOC to proceed—depositions the State already agreed to.”

Ex. A (Nov. 5, 2018 Ltr. from Baldwin to Cheffo at p.2). As acknowledged in the State’s counsel’s letter, the State’s position is that the Special Discovery Master’s Order did nothing—it

merely ordered the State to do something that was not at issue and which the State had already agreed to do. The State ignores the fact that Purdue's motion was to compel the production of a *corporate representative witness*, and that the motion was *sustained*.

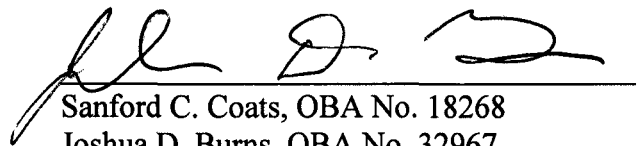
The State's refusal to abide by a clear ruling is yet another example of its failure to participate in discovery in good faith. Purdue has been forced to move the Court to order the State to compel documents, files, and witnesses, in some cases repeatedly on the same subject. The State's campaign of obstructionism is causing delay and bottlenecks when discovery needs to progress to meet the case deadlines.

CONCLUSION

Purdue respectfully requests the Special Discovery Master explain to the State that the Motion to Compel Witness Testimony was sustained and the State must present a properly prepared corporate representative to testify as to the substance of the Department of Corrections' standards, practices, and procedures for the diagnosis and treatment of pain and for the use of opioid medications.

Date: November 13, 2018

Respectfully submitted,



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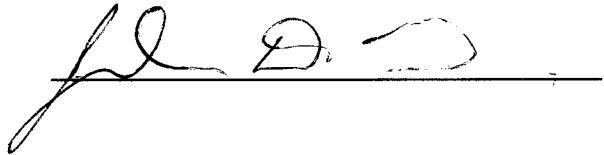
*Counsel for Purdue Pharma L.P.,
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2018, I caused a true and correct copy of the following:

PURDUE'S MOTION FOR CLARIFICATION

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

A handwritten signature in black ink, appearing to read "J. D. O.", is written over a horizontal line. The signature is cursive and somewhat stylized.

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November 5, 2018

VIA ELECTRONIC MAIL

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Re: *State of Oklahoma ex rel. Mike Hunter v. Purdue Pharma, LP, CJ -2017-816*

Dear Mark,

I write in response to your October 30, 2018 letter regarding the October 25-26 deposition of the State's corporate representative on the topics set forth in Purdue's October 10, 2018 Notice to Take Videotaped Deposition of Corporate Representative Pursuant to Section 3230(C)(5) of the Discovery Code (the "Notice"). In your letter, you claim the State's corporate representative, Ms. Jessica Hawkins, "was not fully prepared to testify" on "the September 19 and 20 topics." This is incorrect. As you know, Ms. Hawkins spent over 100 hours preparing to testify on the seven topics described in the Notice, including the September 19 and 20 topics. And, Ms. Hawkins testified for nearly 12 hours over two days.

Specifically, Ms. Hawkins testified that in preparation for these two topics she met with several individuals at the Oklahoma Department of Mental Health and Substance Abuse ("DMHSAS")—the State agency that operates State psychiatric facilities—to gather information responsive to these two topics. Ms. Hawkins testified that she discussed these two topics with these individuals precisely as written in the Notice and requested they provide her responsive information to educate her to testify on these topics. Ms. Hawkins testified that in preparation for her deposition, she procured information regarding DMHSAS's standards, policies and procedures regarding the use of opioid medications, opioid alternative medications and the treatment of pain in State operated psychiatric facilities. She also testified that she reviewed policies and procedures governing the use of opioids, opioid alternative medications or the treatment of pain in the State operated psychiatric facilities that had such policies, and that she was prepared to answer questions about them. These policies and procedures were provided to you on day 1 of Ms. Hawkins' two-day deposition. Put simply, Ms. Hawkins adequately prepared to testify on the two topics addressed in your letter in accordance with the State's obligations under the Oklahoma Discovery Code.

Your characterization of the Special Discovery Master's ruling regarding the deposition of Mr. Clint Castleberry, and Paul's similar characterization in Part 2 of his letter from October 30, is wrong. The Special Discovery Master's Order does not state Mr. Castleberry was unprepared to testify on the topic for which he was designated to testify on behalf of the Department of Corrections ("DOC"). At the hearing on Purdue's Motion to Compel on this issue, the State informed the Special Discovery Master that the State offered Purdue dates for the depositions of three persons employed with DOC that Purdue noticed for individual depositions. The State also informed the Special Discovery Master that it was working to produce the custodial files for these three individuals. As you were not at the hearing, your misunderstanding of what occurred may just be an oversight on your part. While the Special Master's Order does state Purdue's Motion is "sustained," the State told the Court it was already providing Purdue the relief it sought—that we were voluntarily making these individuals witnesses available and gathering their custodial files.

Thus, while the Special Discovery Master sustained Purdue's Motion to Compel, he did not order the State to sit another DOC corporate representative for a 3230(C)(5) deposition on the same topic Mr. Castleberry previously testified on. Rather, in sustaining Purdue's Motion, he ordered the three noticed depositions of individuals employed at DOC to proceed—depositions the State already agreed to.

Nevertheless, if you would like to meet and confer on the adequacy of Ms. Hawkins' preparation to testify on the September 19 and 20 topics, I am available to do so on Thursday November 8, 2018 at 10:30 a.m. Please confirm this time works for you. If not, please propose an alternative time for the meet and confer.

Sincerely,



Lisa Baldwin

cc: Paul LaFata
Jonathan Tam
Brooke Churchman
Nathan Hall