

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }



FILED
OCT 9 2018
IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

In the office of the
Court Clerk MARILYN WILLIAMS

Plaintiff,

vs.

PURDUE PHARMA L.P., et al,

Defendants.

Case No. CJ-2017-816

PURDUE'S SECOND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS

Purdue Pharma L.P. and The Purdue Frederick Co. (collectively, "Purdue") respectfully move this Court for an Order compelling the State to produce documents from certain Oklahoma agencies pursuant to Section 3237(A)(2) of the Oklahoma Discovery Code. Ten months ago, on January 12, 2018, Purdue requested that the State produce documents from seventeen identified Oklahoma agencies, though it did not limit its request solely to those agencies. Purdue has reason to believe that all of the named agencies have documents that are relevant to this dispute. The State has produced some documents from seven of the seventeen agencies, but has failed to produce any documents from the following ten agencies:

- Office of the Medical Examiner of the State of Oklahoma;
- Oklahoma Office of the Governor;
- Oklahoma Department of Public Safety;
- Oklahoma State Bureau of Investigation;
- Oklahoma State Board of Dentistry;
- Oklahoma State Board of Nursing;

- Oklahoma State Board of Pharmacy;
- Oklahoma Legislature;
- Oklahoma State Board of Veterinary Medical Examiners; and
- Oklahoma Workers' Compensation Commission.

Purdue expected the State to produce documents from the ten aforementioned agencies in response to several of its requests, including, but not limited to¹:

- **Purdue Pharma L.P.'s Request No. 4:** All Documents and Communications concerning or relating to any assessment of actual or potential harm to Patients or other individuals as a result of the Relevant Medications or any Defendants' marketing, Educational Activities, or statements about the Relevant Medications.
- **Purdue Pharma L.P.'s Request No. 6:** All Documents and Communications relating to the risks, benefits, safety, side effects, or efficacy of the Relevant Medications, including but not limited to Documents and Communications relating to summaries, studies, and/or analyses of any potential, alleged, or actual risks associated with any of the Relevant Medications.
- **The Purdue Frederick Co.'s Request No. 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.
- **The Purdue Frederick Co.'s Request No. 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.
- **The Purdue Frederick Co.'s Request No. 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

¹ On April 25, 2018, Judge Hetherington sustained Purdue's motion to compel production of documents responsive to these specific requests, in addition to several other requests.

prescription involved a Medical Necessity and was otherwise eligible for payment.

- **The Purdue Frederick Co.'s Request No. 7:** All Documents and Communications identifying, discussing, describing, or otherwise relating to the circumstances in which Opioid use is or is not a Medical Necessity, reasonably required, or otherwise appropriate for the treatment of chronic pain.

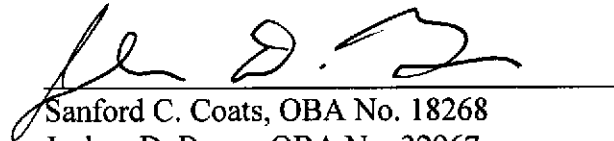
More than ten months have passed, and the State still has not produced documents from these agencies. Purdue attempted to confer with the State in good faith regarding its incomplete document production. On April 3, 2018, the State acknowledged during a discovery call that it had "no intention to exclude anything that we're aware of from the definition [of Oklahoma Agency]." Ex. A (4/3/18 Discovery Conf. Tr.) at 47:6-12 (Mr. Duck). On September 19, 2018, Purdue emailed the State, asking the State to let Purdue know by September 24, 2018 whether the State would start a rolling production of documents from these agencies on October 1, 2018. Ex. B. The State did not respond to Purdue's email, necessitating this motion to compel.

The State's failure to collect and produce documents from over half of the agencies it already acknowledged had relevant discoverable information is an obvious violation of its duty to comply with discovery obligations pursuant to the Oklahoma Discovery Code. *See*, 12 Okla. Stat. § 3326(B). As both the State and Purdue have previously noted, the Parties are working on a highly accelerated timeline, and the State's protracted delays and trickle of documents undermine the timeline requested by the State and ordered by the Court. The State's failure to produce documents from previously identified agencies significantly hampers Purdue's ability to prepare its case, take depositions, prepare for the expert deadlines, and move forward in the discovery process.

For these reasons, the Court should compel the State to begin producing documents from these agencies within 7 days of the Court's decision on this motion, and to complete that production within 30 days of the Court's decision.

Date: October 4, 2018

Respectfully submitted,



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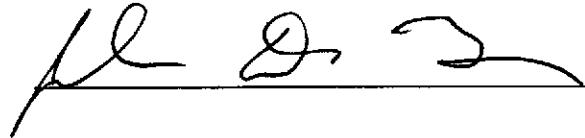
*Counsel for Purdue Pharma L.P.,
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Frederick Company Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2018, I caused a true and correct copy of the following:

PURDUE'S SECOND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS

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

A handwritten signature in black ink, consisting of a stylized 'P' followed by 'D' and 'S', written over a horizontal line.

CERTIFICATE OF COMPLIANCE WITH 12 OKLA. STAT. § 3237(A)(2)

I hereby certify that counsel for Purdue has in good faith conferred with counsel for the State in an effort to secure the information that is the subject of this motion without court action. The parties were unable to reach a resolution.

A handwritten signature in black ink, consisting of a stylized 'P' followed by 'D' and 'S', written over a horizontal line.

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EXHIBIT A

1 I'd also ask that you all consider providing to us a
2 list of the different categories in the database.
3 Maybe you already talked about that. But if we could
4 know all the different variables that can be put into
5 that spreadsheet, it could help us short-circuit some
6 of these issues that we're discussing today.
7 MR. HOFF: All right. We'll certainly
8 take that under advisement. That's about all I could
9 say about that at this particular time, because I'm
10 just not an expert on it like I said.
11 MR. DUCK: Okay.
12 MR. PATE: Okay. That's all that we
13 wanted to talk about right now, guys, as far as
14 Purdue's objections and answers to our
15 interrogatories. So unless you have anything else on
16 that we -- we're happy to move into the issues you all
17 wanted to raise.
18 I don't know if, Robert, you still want
19 to do that or if you need to participate in those
20 discussions and want to reconvene at another time.
21 You know, just tell us what you want to do. We're
22 here.
23 MR. HOFF: So this is Rob. I'm going to
24 hang up, but I know others are going to stay on to
25 talk about those issues. It was very nice talking to

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1 all of you again, and, you know, thank you for the
2 productive conversation and thank you for the
3 accommodation of, you know, my scheduling conflict.
4 I appreciate it.
5 MR. DUCK: Thanks, Rob.
6 MR. HOFF: Take care.
7 MR. DUCK: You too.
8 MR. LaFATA: Hey, Drew, this is Paul.
9 I'm still on. And thank you. I appreciate kind of
10 fitting in the issues. I know we had a number of
11 issues to get through, and thank you for fitting those
12 in so we could take care of that, and I think it was a
13 fine proposal that you had by e-mail that we go
14 through those first.
15 I wanted to, as I noted by e-mail to
16 you, ask about the state's redefinition of some terms
17 that we've been inquiring about in discovery and in
18 particular the interrogatories.
19 Starting, for instance, with the word
20 "claim," what was the basis for the state's narrowing
21 of the definition of claim from what was written to a
22 request for payment or reimbursement submitted to the
23 Oklahoma Health Care Authority.
24 MR. PATE: Yeah, so this is Drew. I
25 mean, we understood that that's what you were asking

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1 for, was Medicaid claims, and to the extent that
2 that's not correct let us know. Just the way that the
3 definition of the term, though, wasn't limited in any
4 way and appeared to be overbroad and could call for a
5 number of things that have nothing to do with this
6 case just because it was -- I mean, I believe the
7 extent of the definition was any request for payment
8 or reimbursement, and so we understood that to mean
9 Medicaid claims, and so that's why we told you that's
10 what we're going to provide you. So if that's not
11 what you meant, let us know and we'll consider it.
12 MR. LaFATA: Sure. That's not what was
13 stated, and that's not what was meant. I understand
14 when you read the word on its own and if you don't
15 look in the context of the request why you would think
16 that, but, for instance, we might have said claim for
17 Medicaid, and then it's a claim from within the
18 Medicaid system.
19 So the term is intended to -- it's
20 intended to cover any type of payment or reimbursement
21 that's at issue here, and that's going to include
22 other types of systems or agencies.
23 So if the basis for the objection was
24 just we didn't think you meant that, at least we can
25 clarify that on the phone here. We certainly meant

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1 what was said, and we put it in context so we can
2 communicate to you if we're talking about a claim for
3 Medicare or a claim for other type of system.
4 MR. PATE: Okay. That's helpful. I
5 don't think it's going to create any issues with our
6 responses. I don't think there's any information that
7 you've asked for that we -- with respect to any
8 specific interrogatory where we said, Oh, this would
9 include other potential claims but we're only going to
10 provide Medicaid claims. You know, it's like we
11 talked about on the last call. We're not withholding
12 any information that we've identified with the
13 exception of privilege at this point.
14 MR. DUCK: Yeah. I think -- this is
15 Trey. Paul, I think the purpose of that was to
16 eliminate all of those potential irrelevant claims
17 that we can't even think of, right, just some random
18 thing out there that has nothing to do with this case.
19 It was not -- there is nothing that we had in mind
20 that we are intentionally excluding from the
21 definition of claim.
22 So if there's anything at issue in this
23 lawsuit related to a request for reimbursement for
24 opioids or for treatment related to opioid addiction
25 made to an Oklahoma agency, then, you know, we intend

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1 to be responsive with that information.
2 MR. LaFATA: Thank you.
3 MR. DUCK: There's nothing that we're
4 intentionally excluding. We're just being -- you
5 know, being lawyers and trying to, you know, exclude
6 those things that just have no rel- -- I can't even
7 think of an example, Paul, because I don't know what's
8 out there, right, but that's the point of --
9 MR. LaFATA: Yeah.
10 MR. DUCK: -- of the objection, right,
11 because if there's some other thing out there that we
12 don't even know about -- we just wanted to get a
13 narrower definition to what it is we do intend to
14 include.
15 Now, if we in our objection to the
16 definition and our redefinition too narrowly defined
17 it, all I can say is, you know, we're happy to send
18 you something in writing, but what I just said on the
19 call with the court reporter present is accurate.
20 I think that there is a situation where
21 the Mental Health Department could be potentially
22 involved in a claim for reimbursement, but I don't
23 think that's ever to the exclusion of the Health Care
24 Authority. So I honestly think that the Health Care
25 Authority is always going to be involved in a claim, a

1 request for reimbursement or payment that is in any
2 way relevant to this case. And, you know, even the
3 areas that we may not as the Plaintiff think are
4 relevant that you all might, I still think it's always
5 going to be through the Health Care Authority.
6 ~~If there are particular instances that~~
7 ~~you are aware of due to your experience in other~~
8 ~~litigation in other states, then we're happy to hear~~
9 ~~that and look into it and see if it's appropriate for~~
10 ~~us to expand our view of things, but there is no~~
11 ~~intention to exclude anything that we're aware of from~~
12 ~~the definition.~~
13 MR. LaFATA: Thank you, Trey. I think
14 that illuminates a lot, and I take from that that the
15 reference to, say, Oklahoma Health Care Authority
16 under the Medicaid program is not -- I think you
17 frankly stated it probably clearer than I would in
18 part of your answer there that this is not intended to
19 exclude a claim submitted to an Oklahoma agency for an
20 opioid, and I think that was the intent of asking this
21 question in the meet and confer. So I appreciate
22 that.
23 MR. DUCK: Yeah. Sure.
24 MR. LaFATA: Okay. Then the next issue
25 I wanted to inquire about is the redefinition of the

1 word "employee." Let me see if I can just scroll down
2 to that. Okay. So this was redefined to mean an
3 individual employed by the state during the inquired
4 about time period over whom the state maintained
5 sufficient custody and control to enable the state to
6 possess or access responsive records or information
7 pertaining to the individual.
8 We earlier in this discussion were
9 talking about contractors, say, with Abbott and sales
10 representatives, and so I take it the state believes
11 that contractors are part of the discovery in this
12 case, and it seems to me that the definition of
13 employee is excluding those folks. Is that correct?
14 MR. PATE: Not -- no, not really. This
15 is Drew. What our redefinition is intending to convey
16 is that we'll provide the information that we have for
17 people who worked for the state whether they worked as
18 a contractor -- if they were defined as an independent
19 contractor or an employee, we're not relying on, you
20 know, a legal distinction between those two.
21 The question is just whether or not that
22 information is within our custody -- possession,
23 custody or control. And if we have it, we'll provide
24 it, but we aren't going to go outside of our
25 possession, custody or control to obtain that

1 information from someone who falls under one of those
2 categories, like a temporary employee or a contractor.
3 So that's all. We aren't excluding -- or intending to
4 exclude contractor information to the extent that the
5 state has that information.
6 MR. LaFATA: Yeah, and when you refer to
7 possession, custody and control, are you including
8 with that knowledge? In other words, if your client
9 is aware of this information even if it doesn't
10 possess a document about it, that -- you're not
11 excluding knowledge, right?
12 MR. DUCK: I don't think --
13 MR. PATE: I'm not sure I a hundred
14 percent understand your question. Sorry. Go ahead,
15 Trey.
16 MR. DUCK: Yeah, this is Trey. The
17 shorter -- the short answer, Paul, is I don't think
18 so. I don't think we're excluding knowledge. I mean,
19 I think that would be included. That said, you know,
20 I'm trying to think of reasonable instances.
21 Obviously if that knowledge actually
22 resided in a person who no longer works for the State
23 of Oklahoma we can't re-create that knowledge. But,
24 yeah --
25 MR. LaFATA: Right.

EXHIBIT B

Rosen, Sam

From: Tam, Jonathan
Sent: Wednesday, September 19, 2018 5:35 PM
To: Trey Duck; Drew Pate
Cc: LaFata, Paul
Subject: OK v. Purdue -- Discovery

Dear Trey and Drew,

We write to discuss two categories of outstanding discovery from the State.

First, the State has yet to respond to Purdue Pharma Inc.'s Interrogatories 7-9 (served on April 18, 2018), despite Judge Hetherington's August 31, 2018 ruling compelling the State to do so. Please let us know by Monday (9/24) whether the State can provide answers to the outstanding interrogatories by October 1.

Second, it does not appear that any documents have been produced by the following Oklahoma Agencies, as defined in Purdue's document requests:

- Oklahoma Office of the Governor;
- Oklahoma Legislature;
- Oklahoma Department of Public Safety;
- Oklahoma State Bureau of Investigation;
- Oklahoma State Board of Dentistry;
- Oklahoma State Board of Nursing;
- Oklahoma State Board of Pharmacy;
- Oklahoma State Board of Veterinary Medical Examiners;
- Oklahoma Workers' Compensation Commission; and
- Office of the Medical Examiner of the State of Oklahoma.

Please let us know by Monday (9/24) whether the State can start a rolling production of documents from these agencies by October 1.

Thanks,
Jonathan

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