



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.,)
Defendants.)

Discovery Motion Submitted to:
William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

FEB 07 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**THE STATE'S OMNIBUS RESPONSE TO DEFENDANTS' MOTIONS TO
COMPEL DISCOVERY REGARDING REQUESTS FOR ADMISSION
AND INTERROGATORIES**

This Court has clearly stated that prescriber and patient information and ongoing investigations or confidential criminal investigation files are outside of the scope of discovery in this case. However, Defendants Purdue, Janssen, and Teva (collectively, "Defendants") intentionally sought to circumvent the Court's rulings by serving requests for admission ("RFA")

and interrogatories seeking this information. In accordance with the Court's Orders, the State objected to these requests as outside of the scope of discovery. Because Defendants' requests are improper, and therefore properly objected to, the State respectfully requests that the Court now deny Teva's Motion to Compel, Janssen's Motion to Compel, and Purdue's Motion to Determine the Sufficiency of the State's Answers to its Requests for Admission (collectively, "Motions").

INTRODUCTION

In continued defiance of the Court's discovery rulings, Defendants attempt to obtain indirectly what the Court has held they cannot obtain directly. Defendants, through RFAs and interrogatories, seek information regarding individual prescribers, patients, and claims, as well as confidential criminal investigations conducted by the Attorney General's Office. The Defendants have used different discovery mechanisms to try to obtain this information before, and time and time again, this Court has denied Defendants' requests. *See* Oct. 10, 2018 Order; Oct. 22, 2018 Order; Dec. 4, 2018 Order; Dec. 20, 2018 Order. The result here should be no different.

Defendants' Motions should be denied for three reasons. First, Defendants' requests seek individualized prescriber, patient, and claims data which this Court has determined is not within the scope of discovery. Second, Defendants seek information related to ongoing investigations or confidential criminal investigation files which this Court has also held to be non-discoverable. Third, the State's objections to Purdue's additional RFAs are proper and are within the scope of Okla. Stat. tit. 12 § 3236.

ARGUMENT AND AUTHORITIES

1. **The State's Objections to Teva's RFA Nos. 4, 9-10, Purdue's RFA Nos. 6-9, 17, Janssen's RFA No. 3, And Janssen's Interrogatories Nos. 20-22 Are Proper Because the Requests Seek Individualized and Protected Prescriber and Patient Information.**

Defendants attempt to use RFAs and interrogatories to force the State to engage in personal

individualized discovery and to obtain confidential prescriber and patient data which this Court has previously determined is outside of the scope of discovery. *See* Oct. 10, 2018 Order; Dec. 4, 2018 Order. Teva’s RFA Nos. 4, 9, and 10, Janssen’s RFA No. 3, and Purdue RFA Nos. 6–9, and 17 improperly attempt to force the State to take on the burden of marshaling individualized proof related to patients and prescribers. Judge Hetherington determined in his October 10, 2018 Order that the discovery of prescriber and patient information was outside of the scope of discovery and denied the Defendants’ Motion to Compel Discovery Regarding Claims Data. *See* Oct. 10, 2018 Order. In doing so, Special Master Hetherington found that personal individualized proof is both unnecessary and highly burdensome:

An aggregation approach to this case I find to be reasonable and can fairly fit the needs of all parties. Personal individualized discovery is not the only way Defendants can fairly defend this case . . . Defendants’ argument that this claims data is “relevant” and discoverable I find to be insufficient to warrant discovery of personal patient and doctor/prescriber information in the scope sought to be compelled by Defendants.

See id. Judge Balkman affirmed this Order on December 4, 2018. *See* Dec. 4, 2018 Order. Defendants’ RFAs and Interrogatories are nothing more than an attempted end-run around these rulings.

Similarly, Janssen’s Interrogatories 20–22 specifically call for individualized information related to prescribers and patients. *See* Interrogatory No. 20 (“Identify all Oklahoma Doctors who were misled, and for each, the specific Janssen Communication(s) that misled the Doctor.”); Interrogatory No. 21 (“Identify all Oklahoma Doctors who were unable to accurately counsel their patients about the risks and benefits or prescription Opioid medications as a result of any Communication made, sponsored, or supported by Janssen.”); Interrogatory No. 22 (“Identify all Claims for reimbursement of opioid prescriptions that were denied by You after they were written

by a Doctor who was under investigation or prosecution for their Prescribing Behavior.”¹). The Special Master has expressly held such information to be outside the scope of further discovery. *See* Oct. 10, 2018 Order (“I am satisfied Defendants have in their possession or have access to prescriber/patient data necessary for complete discovery . . .”). The information sought in the foregoing requests is not discoverable. Accordingly, Defendants’ motions to compel this information should be denied.

2. **The State’s Objections to Purdue RFA No. 20, Teva RFAs Nos. 4 and 11, and Janssen RFA No. 3 Are Proper Because the Requests Seek Information Related to Investigations and Criminal Proceedings.**

In addition, Purdue’s RFA No. 20, Teva’s RFAs Nos. 4 and 11, and Janssen RFA No. 3 seek information regarding ongoing investigations or confidential criminal investigation files which this Court has held to be outside of the scope of proper discovery. *See* Oct. 22, 2018 Order; Dec. 4, 2018 Order; Dec. 20, 2018 Order. In his October 22, 2018 ruling, Judge Hetherington specifically stated:

Any production of criminal investigatory files is likely to place ongoing criminal prosecutions or disciplinary actions in jeopardy. Investigative notes, reports, witness interviews, interview notes, contact information or transcripts are work product and protected. By their very nature they will contain prosecutor opinions and mental impressions that should be protected both in the criminal context and actions involving disciplinary proceedings.

Oct. 22, 2018 Order.² As a result, the State is not required to gather and review criminal investigatory files. Thus, Defendants’ requests are improper because they necessarily require the State to engage in the very discovery process the Court has ordered is not required. For example,

¹Janssen’s subsequent offer to change Interrogatory 22 does nothing to change the fact that it improperly seeks to force the state to marshal individualized proof.

²Judge Balkman upheld Special Master Hetherington’s Orders with respect to production of investigative files but ordered the State to produce non-sealed pleadings and other documents filed with a tribunal, documents produced to the attorney for the defendant in those proceedings, and an *in camera* list of investigations—all of which the State has done. *See* Dec. 20, 2018 Order.

Janssen's Request for Admission No. 3 asks the State to admit that it reimbursed opioid prescriptions written by doctors while the doctors were under investigation or prosecution for their prescribing behaviors. To answer this admission, the State would necessarily have to review and analyze all pertinent investigation and criminal prosecution files. According to the Court, the State is not required to engage in this process. This information is not discoverable—by any means. Accordingly, Defendants' motions to compel this information should be denied.

3. The State's Objections to Purdue's RFAs Comply with Oklahoma Law.

Finally, Purdue argues that its RFAs should be deemed admitted due to the State objecting to its requests. Purdue Motion at p. 5. Once again, Purdue is misconstruing Oklahoma's discovery statutes and attempting to place an obligation upon the State that does not exist. Okla. Stat. tit. 12 § 3236 provides, in pertinent part:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's attorney.

§ 3236(A) (emphasis added). This statute allows the State to file either an answer or an objection. Here, even a cursory review of Purdue's RFAs demonstrates that they are objectionable on many grounds, including burden, overbreadth, vagueness, and—repeatedly—as attempts to impose burdens and elements of proof that are inconsistent with Oklahoma law and the Orders in this case.³ The statute further provides that “[i]f objection is made, the reasons therefor shall be stated.”

³ See, e.g., RFA No. 6 (“Admit that some prescriptions of Purdue Opioid Medications written by Oklahoma Health Care Professionals during the Relevant Time Period, for more than a three-day supply, were not medically unnecessary and that the State of Oklahoma approved the payment of claims for such prescriptions.”); No. 16 (“Admit that the State of Oklahoma does not contend that there is any statement or omission in the FDA-approved labeling for any Purdue Opioid medication that, at the time it was made, was false or misleading.”); No. 17 (“Admit that Purdue Opioid

Id. The State’s responses explain exactly why it was objecting to the RFAs at issue. For example, the State’s responses to RFAs No. 6–9 span several pages, specifically address the State’s position on what renders an opioid prescription “medical unnecessary,” and refers Purdue to many other sources to substantiate its responses. *See* Purdue Motion, Exhibit C. The State’s objections are perfectly proper under Oklahoma’s discovery statutes.

In addition, Purdue’s request to have the State’s responses deemed admissions is premature, at best. The statute provides:

The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this section, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or a designated time prior to trial...

§ 3226(A) (emphasis added). In other words, in the event the Court determines the State’s objections to Purdue’s RFAs are not justified, pursuant to the statute, it “shall” order the State to answer. Only if the State’s answer is then insufficient “may” the Court deem the request admitted. Purdue seeks to completely bypass this statutorily-authorized process, and its Motion should be denied. *See Martinez v. United States*, No. CIV-11-830-F, 2014 WL 1338119, at *9 (W.D. Okla. Mar. 28, 2014) (where plaintiff raised objection to request for admission, “[a]t that point, the remedy available to Defendant was to move for a determination of the sufficiency of Plaintiff’s

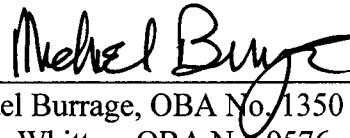
medications have provided and continue to provide relief from chronic, non-cancer pain to some Oklahoma patients.”)

objection—which if granted would result in an order that an answer be made, *not* that the matter be deemed admitted.”) (emphasis in original).

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court deny Defendants’ motions to compel in their entirety.

Respectfully submitted,



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