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
	§	The Honorable Thad Balkman
(1) PURDUE PHARMA L.P.;	§	
(2) PURDUE PHARMA, INC.;	§	
(3) THE PURDUE FREDERICK COMPANY;	§	***Motion Submitted to*:**
(4) TEVA PHARMACEUTICALS USA, INC.;	§	***Special Discovery Master***
(5) CEPHALON, INC.;	§	***William C. Hetherington***
(6) JOHNSON & JOHNSON;	§	
(7) JANSSEN PHARMACEUTICALS, INC.;	§	
(8) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.;	§	
(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.	§	

THE STATE'S RESPONSE TO JANSSEN DEFENDANTS'
EMERGENCY MOTION FOR ORDER TO SHOW CAUSE

Janssen's Emergency Motion to Show Cause (which the other Defendants joined in) is the latest attempt to invite the Court into a non-existent discovery issue stemming from Janssen's misguided insistence that the State produce things that do not exist, are impossible to create, or are not required. Defendants' Motion relates to the data "cross-walks" that Janssen has tried over and over to make a central issue in this case. The State hopes the Court will see this attempt—as with

Defendants' other similar attempts—for exactly what it is: a sideshow of obscure issues meant to create confusion and waste time.

For context, Janssen's longstanding obsession with "cross-walked" data arises out of Judge Hetherington and Judge Balkman's rulings that the State is *not* required to produce identifying information related to Oklahomans in the medical databases in the State's possession. *See* October 10, 2018 Order (Hetherington, J.); December 3, 2018 Order (Balkman, J.). Since these rulings were issued, Defendants have known they were not entitled to patient information. The State has at all times relied on those rulings and de-identified sensitive information—oftentimes information related to the State's most vulnerable populations. However, the State has always done what it can to provide Defendants with valuable and usable data sets that—although de-identified—would still allow Defendants to use the data in building their defenses. This has *always* included "cross-walking" databases where meaningfully possible.

However, Defendants—and specifically Janssen—refuse to be satisfied and refuse to utilize the data provided. Instead, Defendants have used this Court's rulings regarding the confidentially of patient information to berate the State and the Court with intentionally confusing and misleading arguments about obscure technological issues that are irrelevant and entirely ignore reality, possibility, and the bounds of discovery. Oftentimes, Defendants insist on "cross-walking" databases that they know cannot and should not be "cross-walked." Other times, Defendants insist on the State producing "data dictionaries" for things that are self-explanatory (feigning not to know what things like "DOB" stand for) or that are 100% publicly available. The present Motion is just the latest iteration of Defendants' battle of confusion.

Defendants' Motion should be denied for two simple reasons. First, the State has gone above and beyond in terms of the data it has produced, going to back to the well each time

Defendants have demanded it try and retrieve more information. Despite the State's herculean efforts, Defendants claim to be unsatisfied, making additional and different discovery requests with ever-decreasing relevance to the issues in this case. Second, the State has complied with the Court's Orders, and Janssen's Motion seeks relief not contemplated by the Court's February 18 Order.

I. The State Has Given Defendants Everything They Need To Prepare For Trial.

Defendants' continued request for "cross-walked" data across various databases represents a fundamental misunderstanding of what this data is, how it is housed, and what the State is capable of producing. In addition, Janssen's Emergency Motion is a misrepresentation of the huge efforts the State has made to satisfy Defendants' discovery requests, including:

- Defendants asked for all Medicaid claims data (the MMIS database) for all opioid-related claims, which is over 9,000,000 claims. The State provided this information (de-identified).

- Later, Defendants asked for all Medicaid claims data for all medical visits and procedures related to *all* of the SoonerCare beneficiaries who ever received an opioid prescription. The State provided this information (de-identified) and linked up that data with specific alpha-numeric codes (*i.e.* "cross-walked").

- Then, Defendants asked for all Medicaid claims data for *all* non-opioid prescriptions received by *all* SoonerCare beneficiaries who *ever* received an opioid prescription. Despite the irrelevance of this information and the burden upon the State, the State provided it (de-identified and linked up).

- The State also produced the Medicaid Lock-In Program database showing Medicaid patients who have been "locked in" to a single prescriber to prevent doctor shopping. This Lock-In database is also "cross-walked."

- Then the State produced a "prior authorization" database, which shows the decisions made by SoonerCare and Pharmacy Management Consultants related to whether to grant or deny prior authorization requests for opioid prescriptions. This database is also "cross-walked."

- **Thus, Defendants have received the entirety of the MMIS historical record for every SoonerCare beneficiary who ever received an opioid prescription; and**

the databases are totally "cross-walked." The State has produced over **one billion** records of "cross-walked" Medicaid data alone.

- The State also produced opioid pharmacy claims from its HealthChoice database, the insurance program for State employees, despite its disputed relevance to the issues in this case.[1] This is not an easy lift, as the HealthChoice data is not always housed with the State.

- Then the State produced *all* medical visit and procedural claims for those HealthChoice beneficiaries who *ever* received an opioid prescription. The pharmacy claims and medical claims are "cross-walked."

- **Thus, even though the State did not assert a False Claims Act cause of action related to HealthChoice, the State has produced *all* opioid prescriptions and *all* medical claims for HealthChoice beneficiaries who ever received an opioid prescription; and the database is cross-walked.**

- The State produced the Oklahoma Department of Mental Health and Substantive Abuse Services ("ODMHSAS") online query system ("OOnQues") showing patients who have received addiction treatment (de-identified and linked up). These are cross-walked with MMIS data.

- The State produced the ODMHSAS treatment episode data set ("TEDS"). The TEDS database is cross-walked with MMIS data.

- The State produced the Oklahoma Chief Medical Examiner's Office ("OCME") database showing opioid-related overdose deaths, and related investigation files for each. The State also produced a "cross-walk" for those decedents that had previously been identified by the State as being SoonerCare recipients.

- The State produced databases for several other state agencies, including, for example, the Fatal Unintentional Positing Surveillance System (de-identified).

This is indeed a herculean effort by the State. In fact, the State has provided more data to Defendants than the State has provided to its own expert witnesses in this case. That is, Defendants have all of the data the State's experts relied upon, and then some, and then some more.

[1] The State has repeatedly advised it is not seeking any damages or penalties for false claims related to HealthChoice claims, but it voluntarily provided this data in order to avoid any additional discovery disputes with Defendants.

Despite this, Defendants have requested that *all* databases be "cross-walked" to each other (*i.e.*, for all databases to "talk" to each other). **This is not possible across the board, as many of these databases have nothing to do with each other and are like comparing apples to oranges.** Defendants know this but are deliberately attempting to confuse the Court and conflate the issues. Indeed, it would make no sense to try to cross-walk MMIS/SoonerCare databases (which contain the insurance claims of indigent Oklahomans) with the HealthChoice databases (which contain the insurance claims of those gainfully employed by the State of Oklahoma). There simply will be no overlap, which defeats the purpose of "cross-walking" databases. Any claim to the contrary by Defendants is a dirty trick meant to mislead the Court.

The State complied with Defendants' request to the best of its ability and well beyond the proportional needs of the case, especially given the financial limitations of the State and time limitations of its employees. All data is "cross-walked" within its respective database, and the State has linked up what it can between databases. Short of a large team of State employees sitting down for months and months to manually generate datalinks that do not exist—which would not only be impossible and yield unreliable results, but also is not required by the Court, the Oklahoma Discovery Code, due process, or the proportional to the needs of the case—the State has done absolutely all it can to comply with Defendants' data demands. Defendants' intentional strategy of confusion and esoteric meandering should be put to an end. The State has answered the call of discovery in this case.

II. The State Has Complied With The Court's February 18 Order.

Janssen argues the State was ordered to produce "data" allowing Defendants to cross-walk information across different databases on February 18, 2019. However, the Court did not order the State to produce additional data; rather, the Court ordered the State to "identify" certain

information to the extent it was able. *See Ex. 1, 02/18/19 Order at p. 3* (providing that "*to the extent State can* provide identification numbers or link information in any form, State continues to be **Ordered** and compelled to provide the 'cross walked' information") (bold in original) (emphasis added); *id. at p. 4* (requiring the State to "complete this *identification process* on or before March 1, 2019.") (emphasis added). The State has complied with this ruling, providing Defendants all additional information available to it to help link up the data and/or identify any additional fields it believes are missing.

Specifically, prior to and in response to the Court's February 18 Order, the State produced at least the following cross-walk information and identifiers:

- Data dictionaries to aid Defendants in navigating the State's databases, despite the self-explanatory nature of many of the terms in those databases (such as DOB, Provided ID Number, etc.) for all of the MMIS databases and HealthChoice databases, including:
    - MMIS opioid pharmacy claims;
    - MMIS non-opioid pharmacy claims;
    - MMIS medical claims;
    - The "Lock In" database;
    - The "prior authorization" database;
    - HealthChoice opioid pharmacy claims; and
    - HealthChoice medical claims.
- The State also recently compiled and provided publicly available codebooks, manuals, links, and other resources to allow Defendants to more easily navigate through these databases (including, for example, ICD-9 or ICD-10 codes for diagnosis), even though they could have retrieved this information themselves.

There is simply nothing more the State can do to comply with Janssen's requests.

However, at times Defendants' confusion tactics have worked in this Court and so they are incentivized to continue them. As noted above, Defendants have repeatedly insisted on the State producing "data dictionaries" for things that are self-explanatory or are 100% publicly available. Defendants hope to trick the Court into believing that such "data dictionaries" are essential to their

defense and only available through the State. But many times such dictionaries do not exist or are in the public domain. For example, ICD-9/10 codes are universal diagnosis codes created by CMS that have been used for decades and can be looked up in dozens of places, including CMS's online search tool.[2] However, at a February 14, 2019 hearing, and in related briefing, before Judge Hetherington, Defendants suggested that—despite being pharmaceutical companies—they do not know what ICD-9/10 codes are. *See* Transcript at 179:14–25. This was not true, and after the hearing, Defendants admitted that they know exactly what ICD9/10 are—which was promptly pointed out to the Court. The whole ICD-9/10 argument was a ruse to create confusion, and it almost worked. Even so, the State provided to Defendants references for where they can obtain ICD-9/10 codes and other publicly available information they requested.

The "cross-walking" Defendants are seeking is also a ruse. The only other explanation is that Defendants entirely misunderstand the data itself (which seems unlikely since the State has repeatedly explained it). For example, the MMIS/SoonerCare database cannot be "cross-walked" with the HealthChoice database. An individual employed by the State who is a member of HealthChoice will not also have claims submitted under Medicaid, rendering any "cross-walking" between the two databases a pointless exercise. While there may be a miniscule chance that an outlier exists (where for example someone who once worked for the State lost everything and later found themselves on Medicaid), that tiny chance does not warrant forcing the State to waste precious time and resources to generate these links, if such a task is even possible. This would be unnecessary, wasteful, not proportionate to the needs of the case, and not something contemplated by the Court's order or Oklahoma's Discovery Code. Moreover, it would not advance Defendants' case at all. Defendants know this, but their goal is to create confusion in hopes that the Court will

[2] https://www.cms.gov/medicare-coverage-database/overview-and-quick-search.aspx

order the State to go spin its wheels on a pointless task which, in turn, increases the chances of delaying the trial date.

At some point, this has to stop. The State has bent over backwards to comply with its discovery obligations and the Court's rulings. It respectfully requests the Court allow the parties to focus on post-discovery issues and prepare for trial.

CONCLUSION

For the reasons set forth above, the State respectfully requests the Court deny Janssen's Emergency Motion and for such further relief the Court deems proper.

Respectfully submitted,

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Michael Burrage

EXHIBIT

1

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.	

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.
FILED
FEB 25 2019

In the office of the
Court Clerk MARILYN WILLIAMS

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 18th day of February, 2019 the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on February 14, 2019.

Argument was heard and Orders are entered as to the following motions:

State's Motion to De-Designate Confidential Documents

Counsel announced an agreement to strike confidential designations that were the subject of this motion, however, argument was heard regarding State's concern that "this is a systemic problem with blanket designations." Blanket and inappropriate confidential designations can rise

to the level of an abuse of discovery process and subject to sanctions. In the context of this motion, there was no affirmative sanction relief requested and this motion is found to be moot.

Defendants' Motions to Compel Regarding Requests for Admissions and Interrogatories

Janssen Group

RFAs 1, 2 and 3 requests to compel are **Sustained** with a finding that State is only compelled to admit or deny the requests made without identifying any doctors or patient personal information, or ongoing, past or present investigatory information or confidential investigative file content.

Interrogatories 20, 21 and 22 requests to compel are **Overruled.**

Teva, Cephalon Requests for Admissions

RFA No. 4 - **Sustained** with State compelled only to admit or deny.

RFA No. 9 - **Sustained** with State compelled only to admit or deny.

RFA No. 10 - **Sustained** with State compelled only to admit or deny.

FRA No. 11 - **Sustained** with State compelled only to admit or deny.

Watson & Actavis Requests for Admissions

RFA No. 3 – **Sustained** with State compelled only to admit or deny.

RFA No. 8 – **Sustained** with State compelled only to admit or deny.

RFA No. 9 – **Sustained** with State compelled only to admit or deny.

RFA No. 10 - **Sustained** with State compelled only to admit or deny.

Purdue

Purdue's motion asks the undersigned to review State responses to produce request for admissions number 1, 3, 6, 7, 8, 9, 16, 17, 18, 19 & 20, make findings that they are insufficient, deem the requests admitted and awarded attorney fees.

RFAs Numbered 1, 3, 6, 7, 8 & 9 are announced agreed-to by the parties.

RFA No. 16 – Purdue's Motion is **Overruled.**

RFA No. 17 - **Sustained** with State compelled only to admit or deny.

RFA No. 18 – Purdue's Motion is **Overruled.**

RFA No. 19 – **Sustained** with State compelled only to admit or deny.

RFA No. 20 - **Sustained** with State compelled only to admit or deny.

As indicated in previous Orders, the allegations pled and proof model elected by State raise allegations that all Defendants misled all physicians in a joint marketing and promotion effort. State has elected not to prove through individualized proof and adopts a statistical proof model. As previously Ordered, State is required to continue to produce all public, non-privileged requests. State has timely submitted written answers or objections and under Title 12 O.S. §3236(A), Purdue's request to deem admitted and for attorney fees is **Denied.**

State's Motion for Order Permitting Service of Requests for Admission to Authenticate Documents Produced in Discovery

The parties, with argument from Purdue and Teva Group, announced an agreement to permit service of requests for admissions in order to authenticate as many documents that have been produced by the parties as possible. The agreement indicates it does not cover documents produced by third parties, not a party to the litigation. Purdue argued that authentication is premature and that we should not consider authenticating documents until after parties have completed and exchanged exhibit lists. A record was made that similar to designating portions of depositions and getting rulings for admission at trial, a document authentication process for the tremendous volume of documents to be admitted in this case is critical. A process for obtaining deposition designation rulings and rulings on authentication of documents must be addressed as soon as possible and to the extent necessary, deposition designation objections and objected-to document authentication would be presented to the undersigned for consideration and ruling. With this reality in mind, the undersigned entered an Order that allowed the State to proceed with RFA requests to authenticate documents and exceed the thirty limit to do so, with the understanding that we should be dealing with documents that will be trial exhibits anyway and do so in an effort to get the process started and continue after exhibit lists are completed.

Janssen's Emergency Motion To Compel

Argument was heard regarding Janssen's emergency motion to compel and State agreed the undersigned could rule without the benefit of a State response.

Janssen moves the undersigned to compel (1) State to complete its claims data production in fully "cross-walked form" within seven days; (2) immediately certify that State has produced data dictionaries, field definition tables and user manuals that identify all fields and codes in its claims databases or produce all such materials within seven days accompanied by a certification of completion that identifies by Bates number.

Argument indicated the databases that can be linked up or cross-referenced have been produced by State, and again, to the extent State can provide identification numbers or link information in any form, State continues to be **Ordered** and compelled to provide the "cross-walked" information. Certain diagnosis codes, procedural codes and detail status codes can be publicly accessed by Defendants, if not, State is **Ordered** to produce. Argument is that some databases such as the Medical Examiner's database and Health Choice database (which as argued, is relevant to State's fraud and public nuisance claims) cannot be so identified.

Defendants make reference in their brief to the "MDL" Special Discovery Master and Judge's Orders regarding these issues. State argues that part of the basis for the MDL's decision was the fact that, based on what the Plaintiffs had already provided, Defendants were unable to match patients across databases. State argues the Defendants in this case have already been provided with a set of unique identifiers which will facilitate the cross reference across State databases. The plaintiffs in the MDL did not use a de-identified numbering scheme as is being attempted in this case. Pharmacies and distributors are not defendants in this case however, patient-level claims data and description codes, are relevant and argument indicates necessary for Defendants to complete their expert analysis in defense, and there arguably remains an inability to link to some relevant databases.

Therefore, as to the identified databases Defendants cannot access by any "cross-walked" link method or by unique identifiers and, data code dictionaries and field definition tables, State continues to be **Ordered** to produce and Janssen's emergency motion is **Sustained** to the extent State is Ordered to complete database and code production pursuant to statute in a form that is either ordinarily maintained or in a de-identified form which is reasonably usable with Defendants able to obtain the relevant information. If Defendants continue to be denied access to necessary databases, while delay may be the result, the undersigned will revisit and consider further Defendant requests to compel and a different database identifying scheme.

State is **Ordered** to complete this identification process on or before March 1, 2019 at 4pm.

It is so **Ordered** this 18th day of February, 2019.

William C. Hetherington, Jr.

Special Discovery Master