



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.
FILED In The
Office of the Court Clerk

MAR 12 2019

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

Judge Thad Balkman

William C. Hetherington
Special Discovery Master

In the office of the
Court Clerk MARILYN WILLIAMS

**JANSSEN DEFENDANTS'
EMERGENCY MOTION FOR ORDER TO SHOW CAUSE**

For Special Discovery Master
William C. Hetherington

Including Argument and Authorities

INTRODUCTION

On February 18, the Discovery Master ordered the State to produce data from certain databases “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.” Feb. 18, 2019 Order by Special Discovery Master at 4 (Exhibit 1); *see also id.* at 3 (“[T]o 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.”) (emphasis added). The State was ordered to produce this data no later than March 1. More than 10 days after that deadline, the State still has not complied. Instead, the State has altered the data in a manner that that renders much of it unusable for key issues in this litigation.

The State has been given multiple opportunities to produce this data in a usable form. The State has repeatedly represented to Defendants, the Discovery Master, and the Court that it could de-identify the data in a way that preserved Defendants’ ability to match individuals across databases in order to fairly defend against the State’s allegations. Yet with fact discovery set to close this Friday, March 15, and expert depositions concluding just weeks later, the State still has not done so, apparently believing it can run out the clock without consequence. The State should not be permitted to do so. The Discovery Master should order the State to show cause why its failure to comply with the February 18 Order should not preclude the State from pursuing related allegations at trial, including any allegation that Janssen opioid prescriptions led to deaths from overdose or abuse.

ARGUMENT

As Defendants have explained before, the cross-walked data that the State has been ordered to produce are relevant and necessary to fairly defend against the State’s claims. The State has

produced data from various systems relating to overdose deaths, pharmacy claims, and medical claims. Had the State produced the data in the form in which it is maintained, individual patients and prescribers could be tracked from system-to-system, allowing Defendants to address core questions raised by the State's allegations such as whether any individual in Oklahoma who was prescribed a Janssen medication died from an overdose of that medication (or any opioid, whether a prescription pill or an illegal street drug).

The State insisted on removing all patient and doctor names from the vast majority of these data, but repeatedly represented that it could nevertheless produce the data in a form that would permit Defendants to identify specific individuals across the State's various databases. Indeed, the State's representations were the very basis for its argument against production of data in the form in which it is maintained. For example:

- During a May 22, 2018 meet-and-confer, the State represented: “[I]f we have databases where we are producing information, we will connect -- *we will use the same consistent patient identifier for the same patient across those databases.*” May 22, 2018 Meet-and-Confer Tr. at 34:4–37:5 (emphasis added) (Exhibit 2).
- On October 3, 2018, the State made the same representation *to the Court*: “[W]e reidentified each patient with a unique number. So there’s an identifier. *Our intention is to use the same number across all databases so they can track how those patients moved through the State’s data.*” Oct. 3, 2018 Hearing Tr. at 58:23–59:8 (emphasis added) (Exhibit 3).

The Discovery Master relied on these representations in denying Defendants’ motion to compel unredacted claims data. *See* Oct. 10, 2018 Order at 2 (Exhibit 4).

After the State failed to meet its commitment, Janssen had to return to the Court *yet again* to seek an order compelling production of the data in the form required. Given the importance of cross-referencing this data, and the State's representations that it could produce the data in a form that could be cross-referenced, the Discovery Master ordered the State nearly a month ago to produce the data either in a de-identified form that could be cross-referenced or in the form in which the data are ordinarily maintained (i.e. without de-identification). *See* Exhibit 1 at 4. In defiance of the Discovery Master's order, the State has not done either. Specifically, the State has done nothing to correct the problems with the data that it produced before the February 18 order, rendering data from the medical examiner and Fatal Unintentional Poisoning Surveillance System incapable of any cross-referencing to prescription or medical claims data. Defendants thus still have no way to cross-reference any of the data concerning deaths purportedly linked to opioids against any other database produced by the State, such as the medical and pharmacy claims data contained in the Oklahoma Medicaid Management Information System.

Moreover, even data *within the same data system* has been rendered unusable by the State's decision to affirmatively mask identifying information. The de-identified numbers attributed to patients in the State's HealthChoice data system are a mismatched between pharmacy and medical claims, let alone capable of being cross-referenced against any other data. The State produced HealthChoice pharmacy claims data containing 347,972 unique de-identified patient IDs. But only 223,631 of those IDs are found in the HealthChoice medical claims data.

The Janssen Defendants advised the State on February 22 of the discrepancy between the HealthChoice pharmacy and medical claims data. After several emails from the Janssen Defendants following up on the issue, and several emails from the State containing more jokes and personal attacks—but no substantive response—the State finally cursorily asserted that “the

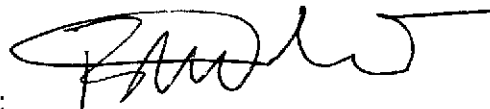
numbers are what the numbers are” because “[t]here were two different systems over time so there are two different numbers for the different time periods.” *See* Email Exchange Between T. Duck and D. Roberts dated Feb. 22 through Mar. 6, 2018 (Exhibit 5). In other words, the data are *not* properly cross-walked—patients cannot be tracked—*even within the same data source*.

In short, the State has failed to produce data in the form required by the Court, flaunting the Court’s orders and contradicting its prior representations to the Court. The State should be required to show cause as to why the Court should not preclude it from raising certain allegations at trial based on its failure to comply with the Court’s discovery orders.

CONCLUSION

The Discovery Master should order the State to show cause why appropriate evidentiary preclusions should not be imposed based on the State’s failure to comply with the Discovery Master’s February 18, 2018 Order or otherwise provide relevant discovery in its sole possession, custody and control.

Respectfully submitted,



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CERTIFICATE OF MAILING

Pursuant to Okla. Stat. tit. 12, § 2005(D), and by agreement of the parties, this is to certify on March 12, 2019, a true and correct copy of the above and foregoing has been served via electronic mail, to the following:

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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.)

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

EXHIBIT 2

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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

PURDUE PHARMA, L.P.; et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF
TELEPHONIC MEET AND CONFER PROCEEDINGS
Tuesday, May 22, 2018

Reported by:
KATHY PABICH
CSR No. 5021
Job No. 2924727
PAGES 1 - 47

1 to identify where there is overlap between a person
2 who are referenced in those records and Medicaid
3 beneficiaries who are referenced in records within MMIS?

4 MR. DUCK: I don't know, but if it's possible,
5 we're going to do it. I don't have the two sets of data
6 in front of me, Steve. It sounds like maybe you're
7 looking at something that I don't have.

8 But we have various patient identifiers that we
9 can use, name, birth date, potentially a Medicaid number
10 that we can use that you talked about in your
11 deposition. So long as there's a common number or
12 identifier, we can build a bridge.

13 MR. BRODY: And will that extend to, you know, if
14 necessary, using names and dates of birth?

15 MR. PATE: Names and dates of birth of who?

16 MR. BRODY: Of particular individuals. Because I
17 can foresee a circumstance where, you know, obviously
18 you're going to have beneficiary numbers, and
19 potentially Social Security numbers, but certainly
20 beneficiary numbers contained within MMIS. You may not
21 get that.

22 If you're talking about, you know, for example,
23 OCME reports of overdose, the OCME reports any, you
24 know, non-accidental death, that data goes back and
25 forth between various Oklahoma programs and agencies or

1 that information, I can foresee a circumstance where an
2 OCME report, which is the source for the Fatal
3 Unintentional Poisoning Surveillance System records,
4 does not contain a, you know, super simple, you know,
5 here's the patient's -- here's the decedent's Medicaid
6 beneficiary identification number, so in that
7 circumstance, there are going to be other sources of
8 information that are going to align with information
9 contained within the MMIS system such as, you know,
10 first name, last name, date of birth, that would allow
11 that process to occur, would allow that kind of
12 identification.

13 So I guess the question really boils down to when
14 you say, you know, if it's feasible, what is the
15 standard for feasibility going to be, one? And two, how
16 can we get a window into the standard that is applied
17 for the assessment of the feasibility?

18 MR. BECKWORTH: So this is Brad. With all due
19 respect, your questions are so long and mixed between
20 asking questions and making statements and just general
21 observations that that was impossible for us to follow,
22 so -- and then you finish with something totally
23 unrelated to what it was you were talking about, so we
24 can't follow that.

25 If you want to put an e-mail or letter out about

1 what it is you're wanting to know, that's fine, but it's
2 spelled out so obtuse that it makes us incapable of
3 responding to it.

4 MR. BRODY: Well, this is Steve. Let me see if I
5 can break it down for you and make it a little simpler
6 for you.

7 Trey, you indicated that, if it's feasible, there
8 will be a way to create a bridge between different
9 systems to identify when records concerning the same
10 patient occur in two different systems.

11 When I hear the statement "where it's feasible,"
12 I wonder what your definition of feasible is. I'll
13 start there. You say if it's feasible. What do you
14 mean if it's feasible?

15 MR. PATE: This is Drew. I mean I think that
16 that's pretty self-explanatory of when we're going to
17 use -- we're talking in a very abstract level right now,
18 I think, which is part of the difficulty on our side.

19 But what that means is if we have databases where
20 we are producing information, we will connect -- we will
21 use the same consistent patient identifier for the same
22 patient across those databases.

23 We don't -- I don't think -- and what we need to
24 know from you, Brad's question, is if you will lay out
25 all of these questions or different sources of

1 information that you think you need or databases or
2 other sources where you are going to be -- where you
3 think you need information about different patients or
4 people and what you need from that, we will be able to
5 look at this a lot more carefully and respond to you.

6 MR. BECKWORTH: This is Brad again. You know,
7 you've asked a bunch. If there's something you want,
8 tell us. If there's something you want from a priority
9 basis, tell us that. We're not going to just sit here
10 and answer these obtuse questions or even try to. It's
11 way too conceptual what you're asking.

12 If you want to be specific, be specific, and if
13 we have something, we'll get it to you, if we can. If
14 it's something you want that we don't have, we'll tell
15 you that. I mean I think we've been pretty cooperative
16 thus far, so I think that's where we are on that.

17 MR. BRODY: This is Steve. We asked the question
18 in our letter what methods will be undertaken to allow
19 them to either be identified or correlated across
20 different State programs or for different types of
21 relevant services.

22 It's just I'm giving examples to try to make that
23 clearer, to the extent that question needs to be
24 clearer, but it was a question that we posed in Dave's
25 letter of May 9th, and it's, you know, it's important,

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

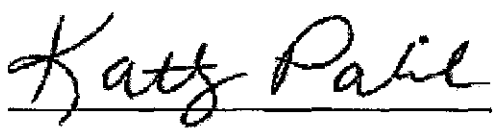
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [] was [] was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee or any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 5/24/2018



KATHY PABICH
CSR No. 5021

EXHIBIT 3

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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

- (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.)

**PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER
TRANSCRIPT OF PROCEEDINGS
HAD ON OCTOBER 3, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER**

REPORTED BY: ANGELA THAGARD, CSR, RPR

1 So why did we need that order in the first place, Judge.
2 It's a good question. As lawyers for the State, we represent a
3 multitude of agencies during this production. All of them
4 possess different types of information. All of them maintain
5 that information in different databases. And all of them
6 require HIPAA protective orders for that information to even be
7 removed from the database. We had to have that order just to
8 get the information.

9 Now, I personally have not seen patient names in any of
10 the data we've produced. The lawyers here aren't looking at
11 it. But we had to have that order in place just to move this
12 stuff around. It's then redacted; that's when we receive it.
13 And then we produce it to the defendants in redacted form.

14 So I don't want this HIPAA protective order that we worked
15 hard to get in place to be misconstrued as some preliminary
16 motion to compel or order compelling the State to produce
17 protected information, because that's not what it is.

18 If your Honor orders us to produce some protected
19 information, we've got that order. It's there as a net. If we
20 accidentally produce protected health information, we've got that
21 order there. It's a net. But it certainly doesn't require it
22 in the first instance.

23 Now, I would like to discuss what we've actually already
24 produced that Mr. Brody went into. He mentioned MMIS data. I
25 just want to link this up for the Court. That's the 9 million

1 claims. That is every claim for an opioid that was paid by
2 State Medicaid. It's been redacted. But honestly, redacted is
3 not the right word, Judge, because we reidentified each patient
4 with a unique number.

5 So there's an identifier. Our intention is to use those
6 same numbers across all databases so they can track how those
7 patients moved through the State's data. But that doesn't
8 identify who these patients are.

9 We've also produced what Mr. Brody refers to as the
10 OOnQues data. I believe it's actually pronounced "OOnQues."
11 But we've produced that. It's also De-identified. Our
12 intention is to produce additional information.

13 And this is really important. The next thing in the
14 hopper, Judge, for us to produce is the HealthChoice
15 information. It's already De-identified. We're working out
16 the logistics on how to get it to them.

17 Our suspicion is -- we don't know, we haven't looked, we
18 won't look, we don't have any interest in looking at who's in
19 these databases. Our suspicion, Judge, is that potentially
20 your information, any other state employee's information is in
21 this HealthChoice database. And we have not gone to everyone
22 and asked them to waive their HIPAA rights, and we don't intend
23 to do it.

24 HealthChoice is on deck. We're going to produce it soon.
25 Your Honor, this is so much information that we've produced, we

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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

- (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.)

CERTIFICATE OF THE COURT REPORTER

I, Angela Thagard, Certified Shorthand Reporter and
Official Court Reporter for Cleveland County, do hereby certify
that the foregoing transcript in the above-styled case is a

1 true, correct, and complete transcript of my shorthand notes of
2 the proceedings in said cause.

3 I further certify that I am neither related to nor
4 attorney for any interested party nor otherwise interested in
5 the event of said action.

6 Dated this 5th day of October, 2018.

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ANGELA THAGARD, CSR, RPR

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EXHIBIT 4

**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.)

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 10th day of October, 2018, the above and entitled matter comes on for ruling by the undersigned having heard argument on Defendants' Motion To Compel Discovery Regarding Claims Data and State's Response thereto on October 3, 2018.

The undersigned finds as follows:

State argues it proceeds under the Okla. Medicaid False Claims Act (FCA) and will utilize statistical modeling to prove causal connection between Defendant's promotion and marketing conduct and damage to State. As argued, State's proof approach does not require proof of individualized doctor and patient interaction as a global population of individualized

proof of each physician's reliance on false and/or misleading promotion and marketing resulting in individual excessive or unnecessary prescriptions. State argues that under this statistical modeling manner of proof, it does not have to establish an individualized and complex chain of causation flowing through thousands of marketing "providers" to thousands of physician "prescribers" ultimately issuing prescriptions to individual patients, many of whom became State Medicaid claims recipients. State chooses to limit this inquiry arguing a proof method that seeks to provide the quantity and quality of proof necessary for the State to carry its burden of proof. While the question of legal sufficiency of State's proof method shall be left for another day, 12 O.S. § 3226(B)(1)(a) requires the undersigned to structure a discovery process based upon reality and in the context of this unique case "... reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action,..." I also have an obligation to weigh privacy rights against the Defendant's desire to individually personalize their discovery. In the context of this case, proportionality would prohibit individualized discovery as it would not be feasible to allow discovery into approximately 9 million claims, 950,000 patients and 42,000 doctor/prescribers contained in the State data bases.

The State of Oklahoma is the plaintiff, not individual patients. As such, it is not an individualized proof process which State argues to be unnecessary and in fact would likely result in an unreasonably lengthy and highly burdensome discovery process as Defendants have stated intentions to depose all patients with claims.

State argues it has produced approximately 9,000,000 pages of prescriber, prescription and patient information with personal information redacted. State in its response to Purdue's First Set of Interrogatories – No. 3 (May 8, 2018 Oklahoma Medicaid Claims Data for all opioid prescriptions for 1996-2017), describes these data base information sources and data parameters for what constitutes "unnecessary or excessive" prescriptions to be supplemented subject to ongoing discovery requiring State to produce additional documents, information, reports studies and research gathered as a part of State's ongoing investigation. The record also indicates Defendants do have the doctor/prescriber names but do not have patient names. The data bases do provide individual identifying numbers to allow for tracking of State Medicaid claims through the system while protecting the patient's personal information.

I am satisfied Defendants have in their possession or have access to prescriber/patient data necessary for complete discovery through a combination of access to data information already in their possession and by way of access to numerous State databases such as the Oklahoma Medicaid Management Information System (MMIS) and Enhanced Code System, Online Query System (ODMHSAS or OOmQues) and the Oklahoma Fatal Unintentional Poisoning Surveillance System which reviews Medical Examiner's Reports. To the extent Defendants do not have access to these data bases, State has been and again is **Ordered** to produce the data base information according to our rolling production process.

It appears most likely true that through this database information, Defendants' have a fair and proportional way to defend this case and can bring in their own experts, doctors/providers and patients as they choose to defend and test the State's theory. Also, I am not satisfied patient

private information protection is fully waived in this case under the terms of the HIPPA Protective Order.

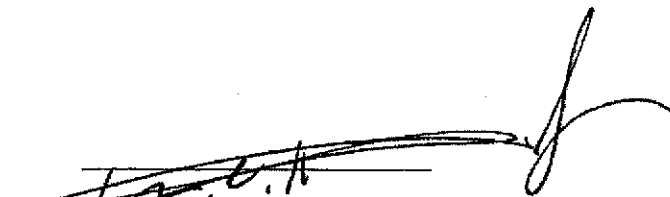
Defendants argue patient and prescriber identities and personal information are required in order to compare to marketing and promotional activities, to research utilization of services such as treatment facilities, overdose records, law enforcement contact emergency service contacts and State Medical Examiner records. Pursuant to the above findings and scheduling order deadlines, Defendants now have and will receive more specific patient and prescriber information in this manner and as a part of the proposed expert statistical modeling sample, and will be entitled to appropriate discovery.

Regarding Cephalon, State argues evidence of a history of joint promotion efforts and agreements to promote and market drugs generally and specifically even though it appears this Defendant may have a total of 245 prescriptions for either Actiq or Fentora issued in Oklahoma. Regardless, Cephalon is entitled, and it is not unreasonable in scope, to full production of all information relevant to details pled and as referenced in Ex. 3 to State's Petition as to these 245 prescriptions. Again, as found above, Cephalon has in its possession or has the same access to data base information that protects patient private personal information. That personal information protection remains protected here, but State **shall** produce any and all other information that has not yet been produced and consistent with this Order as to these 245 claims (prescriptions).

At this time, I do not agree with Defendants' argument that to deny them full disclosure of all claims data information as requested precludes them from meaningful discovery. 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. A broad view of the factors of this unique case must be taken into consideration and equally weighed in determining the scope and propriety of discovery. 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.

Therefore, Defendant's Motion To Compel Discovery Regarding Claims Data as requested is **Denied** consistent with findings made in this Order.

It is so **Ordered** this 10th day of October, 2018.



William C. Hetherington, Jr.
Special Discovery Master

EXHIBIT 5

From: Roberts, David K. (DC)
Sent: Wednesday, March 6, 2019 11:26 AM
To: Trey Duck
Cc: Nathan Hall; Brody, Steve; joshua.burns@crowedunlevy.com; LaFata, Paul; Ercole, Brian M. (brian.ercole@morganlewis.com); Tam, Jonathan; harvey.bartle@morganlewis.com; Larry Ottaway; Amy Fischer (amyfischer@oklahomacounsel.com); John Sparks; Drew Pate; Brad Beckworth; mark.fiore@morganlewis.com; rwhitten@whittenburrage.com; mburrage@whittenburrage.com; Jeff Angelovich; Ross Leonoudakis; Winn Cutler; Lisa Baldwin; Brittany Kellogg; Amanda Thompson
Subject: RE: State v. Purdue et al. - Claims data follow up

Trey – I haven't received a response to this message. Please provide the requested information as soon as you're able. Thank you.

David K. Roberts

droberts2@omm.com

O: +1-202-383-5155

From: Roberts, David K. (DC)
Sent: Sunday, March 3, 2019 12:46 PM
To: 'Trey Duck' <tduck@nixlaw.com>
Cc: Nathan Hall <nhall@nixlaw.com>; Brody, Steve <sbrody@omm.com>; joshua.burns@crowedunlevy.com; LaFata, Paul <paul.lafata@dechert.com>; Ercole, Brian M. (brian.ercole@morganlewis.com) <brian.ercole@morganlewis.com>; Tam, Jonathan <jonathan.tam@dechert.com>; harvey.bartle@morganlewis.com; Larry Ottaway <larryottaway@oklahomacounsel.com>; Amy Fischer (amyfischer@oklahomacounsel.com) <amyfischer@oklahomacounsel.com>; John Sparks <sparksj@odomsparks.com>; Drew Pate <dpate@nixlaw.com>; Brad Beckworth <bbeckworth@nixlaw.com>; mark.fiore@morganlewis.com; rwhitten@whittenburrage.com; mburrage@whittenburrage.com; Jeff Angelovich <jangelovich@nixlaw.com>; Ross Leonoudakis <rossl@nixlaw.com>; Winn Cutler <winncutler@nixlaw.com>; Lisa Baldwin <lbaldwin@nixlaw.com>; Brittany Kellogg <bkkellogg@nixlaw.com>; Amanda Thompson <athompson@nixlaw.com>
Subject: RE: State v. Purdue et al. - Claims data follow up

Trey:

To follow up, your observation that Janssen should "start trying to use the data" produced to date by the State gets to the heart of the problem with the State's discovery failures. We have. But data that is incomplete, subject to deficient de-identification processes, or corrupted is not usable. It is not "good data."

I take from your email that you believe the corrupted and incomplete MMIS pharmacy claims data has been remedied by the replacement files served on March 1. We are reviewing and will let you know whether the data integrity issues with that set have in fact been corrected.

Your response to my question about Health Choice data is no response at all. The fact that "the numbers are what the numbers are" is the problem. That there may have been "two different systems over time so there are two different numbers for the different time periods" does not explain the discrepancy between pharmacy and medical claims in the State's production. To repeat, there are 347,972 unique de-identified patient IDs in prescription data. Of those, only 223,631 are found in medical data, while 124,341 (35.7%) IDs are not found in medical data. This should not be an

artefact of "different systems" because the State said it would assign unique, consistent numbers to patients during the de-identification process it affirmatively undertook in order to justify its decision to mask patient identities. As you know, Judge Hetherington ordered the State to complete the process of producing the data in a de-identified and "cross-walked" form by 4 pm on March 1, 2019. Your email appears to be an explicit admission that the State failed to do so for the Health Choice data. Please confirm or explain how any other conclusion flows from your explanation of the data discrepancy.

Separately, although your email states that you believe the State has complied with its obligations, we have not seen any production of medical examiner or Fatal Unintentional Poisoning System data in a format that would allow decedents to be matched to MMIS or Health Choice data. As you know, this is one of the issues argued during the February 14 hearing on Janssen's emergency motion to compel. The motion was granted. If you did include this information in any of the productions the State has made since February 18, please let us know.

The State needs to meet its production obligations and it needs to do so now. We are months past the time when this information should have been provided to us in a usable format.

David K. Roberts

droberts2@omm.com

O: +1-202-383-5155

From: Trey Duck <tduck@nixlaw.com>

Sent: Saturday, March 2, 2019 1:11 AM

To: Roberts, David K. (DC) <droberts2@omm.com>

Cc: Nathan Hall <nhall@nixlaw.com>; Brody, Steve <sbrody@omm.com>; joshua.burns@crowedunlevy.com; LaFata, Paul <paul.lafata@dechert.com>; Ercole, Brian M. (brian.ercole@morganlewis.com) <brian.ercole@morganlewis.com>; Tam, Jonathan <jonathan.tam@dechert.com>; harvey.bartle@morganlewis.com; Larry Ottaway <larryottaway@oklahomacounsel.com>; Amy Fischer (amyfischer@oklahomacounsel.com) <amyfischer@oklahomacounsel.com>; John Sparks <sparksi@odomsparks.com>; Drew Pate <dpate@nixlaw.com>; Brad Beckworth <bbeckworth@nixlaw.com>; mark.fiore@morganlewis.com; rwhitten@whittenburrage.com; mburrage@whittenburrage.com; Jeff Angelovich <jangelovich@nixlaw.com>; Ross Leonoudakis <rossl@nixlaw.com>; Winn Cutler <winncutler@nixlaw.com>; Lisa Baldwin <lbaldwin@nixlaw.com>; Brittany Kellogg <bkellogg@nixlaw.com>; Amanda Thompson <athompson@nixlaw.com>

Subject: Re: State v. Purdue et al. - Claims data follow up

Yes

Trey Duck

Nix Patterson, LLP

3600 N. Capital of Texas Hwy.

Suite B350

Austin, TX 78746

O: (512) 328-5333

D: (512) 577-5704

On Fri, Mar 1, 2019 at 10:07 PM -0600, "Roberts, David K. (DC)" <droberts2@omm.com> wrote:

Trey: we review productions promptly upon receipt. As usual, no cover letter or other information accompanied the productions you appear to refer to. We again ask you to live up to your prior promises to describe the materials you're producing upon request. Please do so as soon as you can, including the bates ranges you believe remedy the deficiencies we have identified.

Please also confirm whether you now believe the State is in compliance with all orders to produce the information we have now been seeking for over 14 months.

Dave Roberts
O'Melveny & Myers LLP
(202) 383-5155 (Direct)
(417) 860-6736 (Mobile)

Sent from my iPhone

On Mar 1, 2019, at 10:24 PM, Trey Duck <tduck@nixlaw.com> wrote:

There are no deficiencies. You received a production today by year for the MMIS data. Please look at the productions you receive before you hurl accusations. It will save everyone time.

For health choice, the numbers are what the numbers are. There were two different systems over time so there are two different numbers for the different time periods. But you undoubtedly have what you need.

Please start trying to USE the data rather than actively looking for things to complain about. The data is usable. It is good data. It is not deficient. It will allow you to do what you want to do. You have not tried. Your emails are sent in bad faith.

We are finished appeasing your whims.

Trey Duck

Nix Patterson, LLP
3600 N. Capital of Texas Hwy.
Building B, Suite 350
Austin, TX 78746
Phone: (512) 328-5333
Direct: (512) 599-5704
tduck@nixlaw.com

Sent from my iPhone

On Mar 1, 2019, at 9:05 PM, Roberts, David K. (DC) <droberts2@omm.com> wrote:

Trey and Nathan - your emails do not address either of the important deficiencies I mentioned. Please provide the information we requested promptly so that we do not have to trouble Judge Hetherington yet again with the State's delays.

Dave Roberts
O'Melveny & Myers LLP
(202) 383-5155 (Direct)
(417) 860-6736 (Mobile)

Sent from my iPhone

On Mar 1, 2019, at 9:49 PM, Trey Duck <tduck@nixlaw.com> wrote:

Steve,

I have an amazon prime account if you'd like to receive these in two days. Free two-day shipping. It's incredible. Not sure how they do it really. Please let me know. Thanks,

Trey Duck

Nix Patterson, LLP
3600 N. Capital of Texas Hwy.
Building B, Suite 350
Austin, TX 78746
Phone: (512) 328-5333
Direct: (512) 599-5704
tduck@nixlaw.com

Sent from my iPhone

On Mar 1, 2019, at 7:32 PM, Nathan Hall <nhall@nixlaw.com> wrote:

Counsel:

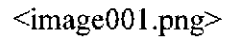
In addition to OHCA-00445511, which provides the answers for Mr. Brody's "Code List Deficiencies" identified at our last hearing (including the 80k-plus diagnosis codes he said he was familiar with), please find the following resources regarding how to read health-insurance claims data:

[CPT 2019 \(CPT / Current Procedural Terminology \(Professional Edition\)\)](#)

[HCPCS 2019 Level II Expert \(HCPCS Level II Expert \(Spiral\)\)](#)

[ICD-10-CM Professional for Physicians 2016.](#)

Have a great weekend.

Nathan Hall
< >
3600 N. Capital of Texas Hwy
Austin, Texas 78746
(512) 328-5333
nhall@nixlaw.com

CONFIDENTIALITY NOTICE

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attorney-work product privilege. If you have received this message in error, do not copy, review or re-transmit the message. Please reply to the sender (only) by e-mail or otherwise and delete the message. Unauthorized interception of this e-mail is a violation of federal criminal laws.

From: "Roberts, David K. (DC)"
<droberts2@omm.com>
Date: Tuesday, February 26, 2019 at 6:46 PM
To: Trey Duck <tduck@nixlaw.com>
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Subject: RE: State v. Purdue et al. - Claims data follow up

Trey – just following up. Please let us know when we can expect a response to the points we identified below.

Best,

Dave

David K. Roberts

droberts2@omm.com

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From: Roberts, David K. (DC)
Sent: Friday, February 22, 2019 10:53 PM
To: Trey Duck <tduck@nixlaw.com>
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Subject: State v. Purdue et al. - Claims data follow up

Trey:

I'm writing to follow up regarding additional deficiencies and questions about the State's production of claims data. As you can surely appreciate, every deficiency prejudices our ability to defend this case, so we ask that you respond as soon as you are able. We're happy to discuss by phone if you like.

First, as to MMIS data, it appears that OHCA-00445507 ("pharmacy.txt," 55 GB) is unsalvageably corrupted. Please reproduce a readable version promptly. In addition, the file overall appears to be missing significant data. It contains data for 1996-2008 only, whereas other MMIS data sources include years 1996-2018. The missing data is potentially important for our experts' work.

Second, as Steve Brody referenced during last week's hearing before Judge Hetherington, there is a large and unexpected discrepancy between HealthChoice pharmacy and medical claims data. Specifically, there are 347,972 unique de-identified patient IDs in prescription data. Of those, only 223,631 are found in medical data, while 124,341 (35.7%) IDs are not found in medical data. Because of this discrepancy, it's not clear that the pharmacy and medical claims data can be crosswalked with one another—that is, we cannot tell whether the same IDs in prescription and medical data are assigned to the same patients. That is especially so given the absence of any demographic information that could be used to confirm a match. There may be some anomaly in HealthChoice coverage that explains how 124,341 HealthChoice patients received opioid prescriptions reimbursed by the program without a documented visit to a doctor, but absent such an explanation, the State's production of medical claims data appears to be incomplete.

Thanks,
Dave

O'Melveny

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