



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

APR 24 2019

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

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

Plaintiff,

v.

PURDUE PHARMA L.P., *et al.*,

Defendants.

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816

Judge Thad Balkman

William C. Hetherington
Special Discovery Master

**DEFENDANTS' MOTION TO EXCLUDE TESTIMONY OF
CHRISTOPHER J. RUHM, PhD, AND BRIEF IN SUPPORT**

THIS DOCUMENT WAS FILED IN ITS ENTIRETY APRIL 23, 2019,
UNDER SEAL PER COURT ORDER DATED APRIL 16, 2018

MOTION

The Defendants move this Court for an order excluding certain testimony of the State's purported expert witness, Christopher J. Ruhm, PhD, pursuant to 12 O.S. §§ 2702-2705. Professor Ruhm's testimony relies on opinions provided by other State witnesses. Some of those opinions, however, are unreliable and otherwise inadmissible. Those opinions thus provide no reliable basis for Professor Ruhm's testimony. Professor Ruhm should thus be barred from offering any opinion that relies on other experts' inadmissible testimony. The Defendants therefore respectfully request that their Motion to Exclude be granted, and for such other and further relief as the Court deems just and proper.

BRIEF IN SUPPORT

In support of this Motion, the Defendants show the following:

I. ARGUMENT¹

Professor Ruhm, one of the State's abatement witnesses, purports to have calculated the overall cost of the State's abatement plan. He did so by plugging in cost estimates for specific abatement programs provided by various of the State's other expert witnesses. But many of those other witnesses' opinions are inadmissible. And insofar as Professor Ruhm relies on other experts' inadmissible opinions, his testimony must be excluded too.

An expert opinion is admissible only if, among other prerequisites, it is "based upon sufficient facts or data" and is "the product of reliable principles and methods." 12 O.S. § 2702; *accord*

¹ Because Oklahoma's statutes governing expert testimony, 12 O.S. §§ 2702, 2703, 2704, and 2705, parallel the language of Federal Rules of Evidence 702, 703, 704, and 705 in all relevant respects, both state and federal jurisprudence on the subject is instructive. *See, e.g., Nelson v. Enid Med. Assocs., Inc.*, 2016 OK 69, ¶¶10-61, 376 P.3d 212, 217-31; *Christian v. Gray*, 2003 OK 10, ¶9, 65 P.3d 591, 598-99.

Nelson, 2016 OK 69, ¶13, 376 P.3d at 217. An expert opinion that relies on another expert's unqualified, unreliable, or otherwise inadmissible testimony is not based on reliable facts, data, principles, or methods. As a result, an expert opinion that relies on an inadmissible expert opinion must be excluded as unreliable too. *See, e.g., Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 788-89 (7th Cir. 2017); *Sims v. Kia Motors of Am., Inc.*, 839 F.3d 393, 404-06 (5th Cir. 2016); *Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1294 (11th Cir. 2005); *Hanson v. Colgate-Palmolive Co.*, 353 F. Supp. 3d 1273, 1288-89 (S.D. Ga. 2018).

Professor Ruhm's testimony is based on the opinions of various other State witnesses. At his deposition, for example, Professor Ruhm testified that he had relied on information provided to him by State experts Jessica Hawkins, Terri White, and Julie Croff. Ex. A, Mar. 28, 2019 Deposition of Christopher Ruhm, PhD ("Ruhm Dep.") 79:19-80:7. He also stated that he had relied on information provided by State expert Renzi Stone's company. *Id.* at 175:13-177:3. And he acknowledged that he had met with three of the State's other expert witnesses, i.e., Jason Beaman, James Gibson, and Andrew Kolodny. *Id.* at 54:21-23.

Unfortunately for Professor Ruhm, much of those other experts' testimony is inadmissible and must be excluded for the reasons detailed in the Defendants' *Daubert* motions specific to those other experts. Thus, under the black letter evidence rules discussed above, Professor Ruhm's testimony likewise must be excluded to the extent that he relies on those other experts' inadmissible testimony.

II. CONCLUSION

For all of these reasons, the Court should grant the Defendants' Motion to Exclude and issue an order barring Professor Ruhm from relying in any way on the inadmissible or excluded testimony of any other expert.

Dated: April 23, 2019

Respectfully submitted,

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CERTIFICATE OF MAILING

Pursuant to 12 O.S. § 2005(D), and by agreement of the parties, this is to certify on April 23, 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 A

[FILED UNDER SEAL]

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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. 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, 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.

VIDEOTAPED DEPOSITION OF CHRISTOPHER RUHM, PhD
TAKEN ON BEHALF OF THE DEFENDANTS
ON MARCH 28, 2019, BEGINNING AT 9:02 A.M.
IN OKLAHOMA CITY, OKLAHOMA

REPORTED BY:
Lacy Antle, CSR, RPR
Job No. 3257456
Pages 1 - 291

1 mathematical error I would correct, or where they 10:03:42
2 would give me some initial set of numbers with a 10:03:46
3 basis, it might be a number of people in a group who 10:03:49
4 were going to receive some kind of program services 10:03:54
5 and then they would inform me that that number had 10:03:58
6 changed and I would put in the new number and do the 10:04:01
7 calculations with the new number. 10:04:05

8 Q With the additional information provided 10:04:07
9 by them, correct? 10:04:08

10 A Yes, exactly. 10:04:10

11 Q Outside of instances where there were 10:04:11
12 mathematical errors or you were provided additional 10:04:13
13 information by them, any other instance in which you 10:04:17
14 altered or changed in any way the information that 10:04:23
15 was provided to you? 10:04:27

16 A Not that I recall. 10:04:32

17 Q Okay. How was that information provided 10:04:33
18 to you, and by "how" I mean over the phone, in 10:04:37
19 person, in writing? 10:04:40

20 A So ultimately what I'm relying on are the 10:04:43
21 information in all of these exhibits, and that would 10:04:49
22 have been provided to me most commonly by Jessica 10:04:50
23 Hawkins and, yeah, that could have been in a variety 10:04:54
24 of forms. 10:04:59

25 Q And tell me what you mean by "a variety of 10:05:01

1 forms," and I'd like to exhaust the list. 10:05:03

2 A Well -- 10:05:06

3 MR. LEONOUidakis: Objection to form. 10:05:07

4 THE WITNESS: -- I think it could have 10:05:07

5 been by phone, it could have been by e-mail, we did 10:05:10

6 have some in-person meetings, but I don't recall if 10:05:16

7 any information was provided that way. 10:05:21

8 Q (BY MR. BRODY) How many times did you meet 10:05:25

9 with Jessica Hawkins in person? 10:05:26

10 A I don't recall. It was not a lot, you 10:05:31

11 know, probably between one and three times. 10:05:33

12 Q Did you come to Oklahoma for those 10:05:37

13 meetings? 10:05:39

14 A Yes. 10:05:39

15 Q Did you meet with anybody else while you 10:05:40

16 were in Oklahoma? 10:05:41

17 A Well, certainly, I mean, I met, I believe 10:05:44

18 once with Terri White. Obviously I met with 10:05:47

19 attorneys. I've met with some of the other experts 10:05:52

20 involved in this case. 10:05:57

21 Q Which other experts have you met with? 10:05:59

22 A Jim Gibson, James Gibson, Andrew Kolodny, 10:06:03

23 Jason Beaman. 10:06:08

24 Q Anyone else? 10:06:10

25 A I don't recall meeting anybody else. 10:06:12

1 Q Why did you meet with Dr. Kolodny? 10:06:15
2 A There were meetings -- so I don't think I 10:06:23
3 met with him for any purpose related to my work. 10:06:28
4 There were times I was in Oklahoma where he was here 10:06:32
5 as well. 10:06:35
6 Q Okay. Why did you meet with Dr. Beaman? 10:06:37
7 A Same answer. 10:06:44
8 Q Why did you meet with Dr. Gibson? 10:06:46
9 A So I think the same answer, in terms of 10:06:52
10 our meetings. We did have additional communication, 10:06:54
11 often by phone, about issues in this case, and I 10:07:01
12 don't know what's covered under privilege, so I may 10:07:08
13 need some guidance there on what's privileged and 10:07:12
14 what's not. 10:07:17
15 Q Let me ask you this, were any attorneys 10:07:17
16 for the state involved in your communications with 10:07:21
17 Dr. Gibson? 10:07:23
18 A Yes, I mean, as a general -- well, unless 10:07:27
19 -- so the rule was in all cases attorneys should be 10:07:33
20 -- well, no, okay. With any -- in general, yes, 10:07:36
21 there were some phone conversations where I believe 10:07:44
22 attorneys were not on the phone. 10:07:46
23 Q Okay. Let me ask you just as a general 10:07:49
24 matter, why did you have a need to communicate with 10:07:52
25 Dr. Gibson in connection with the expert work you 10:08:01

1 calculations that are shown in Table 1, correct? 10:49:21

2 A Well, what I've shown you here is the 10:49:23

3 specific description of the program or service and 10:49:25

4 then I've shown you the first year of cost. I 10:49:27

5 haven't shown you the basis for the cost here, I've 10:49:30

6 just shown you -- 10:49:32

7 Q And my question was the basis for the cost 10:49:33

8 is shown in the exhibits that are referenced in the 10:49:34

9 second column of Table 1, correct? 10:49:38

10 A That's correct. 10:49:40

11 Q All right. And then if we go to page 9, 10:49:40

12 we see the indication, "Abatement costs by major 10:49:47

13 cost category and year," and it runs years 2019 10:49:51

14 through 2048, correct? 10:49:57

15 A Correct. 10:50:00

16 Q And the total amount is highest for 2019 10:50:01

17 and then it remains relatively constant from 2020 10:50:10

18 through 2048, correct? 10:50:14

19 MR. LEONOUidakis: Objection to form. 10:50:17

20 THE WITNESS: I'm not -- "relatively 10:50:21

21 constant," I'm not sure what you mean by that. 10:50:23

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 that they would give me. 10:52:09

2 Q (BY MR. BRODY) So you're relying on the 10:52:10
3 work that they did to determine, basically, the 10:52:11
4 extent to which costs will not decrease -- will or 10:52:15
5 will not decrease over time? 10:52:20

6 A Yes, I'm relying on the information they 10:52:22
7 gave me. 10:52:25

8 Q Okay. And so you're not making any kind 10:52:27
9 of judgments, you know, for example, if we engage in 10:52:29
10 a media campaign, we're not going to need the media 10:52:33
11 campaign after five years, that's not something 10:52:38
12 you're taking a look at or analyzing in this case? 10:52:41

13 A Correct. 10:52:44

14 Q And as another example, if we, you know, 10:52:45
15 treat addiction for 10 years, the costs to address 10:52:50
16 opioid addiction in the state of Oklahoma are going 10:52:57
17 to decline in the ensuing 10 years significantly, 10:52:59
18 you're not making that kind of judgment or offering 10:53:04
19 that kind of opinion in this case? 10:53:07

20 A Correct. 10:53:08

21 Q And, you know, conversely, you're not 10:53:08
22 offering the opinion that, well, even if we 10:53:10
23 implement this broad based media campaign and go 10:53:14
24 full bore for two years, you know, we're not going 10:53:17
25 to need to -- there's going to be no reason to cut 10:53:23

1 back and no basis to cut back, we're still going to 10:53:26
2 have the need for it in years 3 through 30? 10:53:30
3 MR. LEONOUidakis: Objection to form. 10:53:34
4 THE WITNESS: Correct. 10:53:35
5 Q (BY MR. BRODY) If you could turn to page 10:53:47
6 14. Now, this is Exhibit T1, which covers addiction 10:53:49
7 treatment services, correct? 10:54:06
8 A Yes. 10:54:08
9 Q And primary information source is listed 10:54:09
10 as the Oklahoma Department of Mental Health and 10:54:15
11 Substance Abuse Services, correct? 10:54:16
12 A Yes. 10:54:19
13 Q Who provided -- well, who was your source 10:54:20
14 at ODMHSAS? 10:54:23
15 MR. LEONOUidakis: Objection to form. 10:54:28
16 THE WITNESS: So my source for this 10:54:30
17 information would have been Jessica Hawkins and -- 10:54:32
18 I'll stop there. 10:54:39
19 Q (BY MR. BRODY) How did she provide it to 10:54:41
20 you? 10:54:42
21 MR. LEONOUidakis: Objection to form. 10:54:45
22 THE WITNESS: I believe by e-mail. 10:54:47
23 Q (BY MR. BRODY) When did she provide the 10:54:51
24 information to you? 10:54:52
25 A I don't recall. 10:54:53

1 Q (BY MR. BRODY) Would they be addressing 13:43:02
2 things other than opioid abuse and addiction? 13:43:04
3 MR. LEONOUidakis: Objection to form. 13:43:06
4 Outside the scope of the witness's expert testimony. 13:43:07
5 Not here to testify about the programs. 13:43:10
6 THE WITNESS: As I've stated a number of 13:43:12
7 times now, I'll not be testifying on any of the 13:43:15
8 details or appropriateness of the programs. 13:43:18
9 Q (BY MR. BRODY) So is the answer you don't 13:43:21
10 know whether they would be addressing things other 13:43:22
11 than opioid abuse and addiction? 13:43:24
12 MR. LEONOUidakis: Objection to form. 13:43:26
13 Outside the scope. 13:43:27
14 THE WITNESS: Correct. 13:43:28
15 Q (BY MR. BRODY) Is this information that 13:43:34
16 came to you from Jessica Hawkins? 13:43:35
17 A Yes. 13:43:38
18 Q Do you know what the source of the 13:43:39
19 calculation was for her? 13:43:41
20 MR. LEONOUidakis: Objection to form. 13:43:44
21 Outside the scope. Calls for speculation. 13:43:46
22 THE WITNESS: The source of her 13:43:48
23 calculation, no, I mean, not beyond what's in the 13:43:49
24 footnote here. 13:43:51
25 Q (BY MR. BRODY) Okay. So you don't know 13:43:52

1 what the source was for the idea that it would be a 13:43:54
2 [REDACTED] [REDACTED]
3 A No. 13:43:58
4 Q And as with the prior table exhibit that 13:44:01
5 we looked at, your calculation of the 20-, 25- and 13:44:07
6 30-year net present value costs of higher education 13:44:10
7 discretionary prevention funds as part of the 13:44:14
8 abatement plans assumes no reduction in annual cost 13:44:18
9 over that 30-year period, correct? 13:44:24
10 MR. LEONOUDAKIS: Objection to form. 13:44:26
11 Outside the scope. 13:44:26
12 THE WITNESS: Correct. 13:44:27
13 Q (BY MR. BRODY) Turn to T15. This is Public 13:44:29
14 Education, correct? 13:44:35
15 A Yes. 13:44:36
16 Q And your primary information source here 13:44:37
17 is Saxum -- 13:44:40
18 A Yes. 13:44:43
19 Q -- right? 13:44:43
20 A Yes. 13:44:43
21 Q Tell me what information was provided to 13:44:44
22 you by Saxum. 13:44:46
23 A So Saxum provided a spreadsheet that had 13:44:48
24 detailed -- and it's the spreadsheet referenced in 13:44:54
25 this report details that had a detailed breakdown of 13:44:57

1 different kinds of services by year -- sorry -- by 13:45:03
2 period. And so what's on this table are kind of 13:45:08
3 summaries of the totals on a year-by-year basis, 13:45:15
4 with the exceptions of that spreadsheet also 13:45:19
5 included counter detailing costs, which are excluded 13:45:23
6 here and included in a later exhibit. 13:45:26
7 Q In a later exhibit, right. 13:45:29
8 Let's mark this as Exhibit 6. I 13:45:30
9 apologize, it's hard to read. 13:45:41
10 (Exhibit 6 marked for identification.) 13:45:42
11 A Okay. 13:45:44
12 Q I just want to ask you -- I'm not going to 13:45:45
13 ask you any questions about it, I just want to ask 13:45:47
14 if you recognize this as the document referenced in 13:45:49
15 your prior answer? 13:45:53
16 A Yes, it is. 13:45:54
17 Q All right. And this is the document that 13:45:55
18 was the source for the numbers that appear on page 13:45:57
19 33 in the table in Exhibit T15, correct? 13:45:59
20 A Yes. 13:46:02
21 Q Do you have any idea how these numbers 13:46:05
22 were calculated -- 13:46:09
23 MR. LEONOUDAKIS: Object to form. 13:46:12
24 Q (BY MR. BRODY) -- in Exhibit 6? 13:46:12
25 A No. 13:46:13

1 Q Have you read the deposition of Renzi 13:46:14
2 Stone in this case? 13:46:18
3 A No. 13:46:19
4 Q Exhibit P1 provides costs for service 13:46:42
5 described as "Naloxone Distribution and Education," 13:46:48
6 correct? 13:46:51
7 A Yes. 13:46:51
8 Q And it indicates that, "The populations of 13:46:52
9 focus are to be determined through review of 13:46:56
10 academic literature and epidemiological data," 13:46:59
11 correct? 13:47:05
12 A Yes. 13:47:06
13 Q If the population is to be determined, how 13:47:06
14 can you know the cost -- 13:47:08
15 MR. LEONOUidakis: Objection to the form. 13:47:09
16 Outside the scope. 13:47:10
17 Q (BY MR. BRODY) -- already? 13:47:11
18 A So as mentioned, I did not compute. These 13:47:13
19 costs, these were provided me as part of the 13:47:16
20 abatement plan, so that's what I'm using in the work 13:47:19
21 that I've done. 13:47:21
22 Q So who provided these costs to you? 13:47:22
23 A So -- so the information would have been 13:47:24
24 provided to me by Jessica Hawkins, but you note 13:47:27
25 there's two primary information sources here, so 13:47:30

1 Department of Mental Health and Substance Abuse 13:47:33
2 Services and the Department of Mental Health. 13:47:39
3 Q So what did the Oklahoma State Department 13:47:42
4 of Health provide to you directly, if anything? 13:47:43
5 A I don't think I got anything directly, and 13:47:52
6 certainly in the final form I did not get directly 13:47:54
7 from them. 13:47:56
8 Q Did you speak to anyone with the Oklahoma 13:47:57
9 State Department of Health about the costs and 13:47:59
10 categories that are listed in the second table on 13:48:01
11 page 34? 13:48:06
12 A Not to my recollection. 13:48:08
13 Q Did you ask Jessica Hawkins, "How can you 13:48:10
14 know how much it's going to cost to provide access 13:48:15
15 for naloxone kits plus administrative costs if you 13:48:19
16 don't know the population of focus?" 13:48:23
17 MR. LEONOUKAKIS: Objection to form. 13:48:25
18 THE WITNESS: No. 13:48:26
19 Q (BY MR. BRODY) So you just took her number, 13:48:30
20 [REDACTED] [REDACTED]
21 total for the naloxone distribution education 13:48:41
22 program, correct? 13:48:45
23 A Well, you will notice on Footnote 85 13:48:47
24 there's some additional information breaking down 13:48:49
25 the costs, but in answer to your question, as has 13:48:52