



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 } S.S.
CLEVELAND COUNTY }

FILED

MAY 06 2019

In the office of the
Court Clerk MARILYN WILLIAMS

ORDER OF SPECIAL DISCOVERY MASTER

NOW, on this 6TH day of May, 2019, the above and entitled matter comes on for ruling by the undersigned having heard argument thereon on May 4, 2019.

Argument was heard regarding Teva and J&J Janssen Defendant Groups' further requests to compel as a result of State production from the undersigned's as filed April 17, 2019 Order. Defendants argue: 1. Incomplete or nonexistent production of "medical examiner summaries" relied upon by State in compiling statistics related to overdose deaths in Oklahoma; 2. Incomplete e-mail and record report production relevant to specific cases involving possible fraud, waste or abuse from any benefit managing entity to the EGID abuse committee where action was taken as

a result of this data. Argument having been heard and considered of record, the following Findings and Orders are entered:

"Medical Examiner Summaries (Sometimes Referred to as Non-Medical Narratives)"

Defendants argue State has not complied with the Order that compelled State to complete sufficient production of "Medical Examiner summaries relied upon in compiling statistics related to overdose deaths in Oklahoma...that are not deemed confidential." The argument reveals that these "summaries" are really investigator's notes, field notes and reports that are compiled into the final "CME Report" for each Oklahoma death where a Medical Examiner's investigation and report is required.

Defendants argue these summaries include factual detail concerning what FDA medicines were present and would demonstrate whether illicit or legally prescribed and obtained. Defendants argue the majority of these deaths were caused by the illegal actions of others and deaths that were not related to these Defendants. Defendants further argue these summaries are not "privileged" but are "confidential" records protected by statute until such time as a Court orders production under the statute.

State argues these investigatory notes are privileged and protected by statute under Title 63 O.S. 939, and remain confidential even to the extent State has not been able to get them and State argues therefore, State has not used the summaries in preparation for trial with witnesses nor will the trial judge receive evidence from these protected notes. State argues proof to the trial judge will not involve proof of which manufacture was involved in a particular opioid death.

Title 63 O.S. 939 involves production of records, documents, evidence or other material contained in "Medicolegal Investigations". The statute does allow for the Chief Medical Examiner to be Ordered by a court of competent jurisdiction to produce at the office of the Chief Medical Examiner (or upon a showing of good cause specifically ordered otherwise) records, documents, evidence or other material of any nature to be produced to a civil litigant upon a showing of good cause. Argument heard by the undersigned and authority presented by both sides in this case demonstrates the factual and legally sensitive nature of these investigatory type "field note summary" records which frequently include highly personal and confidential information to include source, methods and means information and mental impressions of the field investigator for both closed and ongoing investigations, as well as summaries in some cases of information sought by these Defendants argued to be relevant in defense of this case.

Any request to compel this kind of fact summary evidence requires a court to balance the realities of what may be contained in this confidential factual information against the rights of a civil litigant to obtain these records for both a factually and legally relevant purpose here, in defense of State's now pending claims. There is significant disagreement as to whether or not under the remaining equity claim to be tried to J. Balkman, these "summaries" are both legally and factually relevant.

First, I agree with Defendants argument that the statute does not create a strict prohibitive protection from production. It does create the confidentiality analysis being discussed herein that

does allow for production under circumstances where as here, good cause is shown for certain focused information which when produced, is information which remains protected under our Protective Order and does provide legal protection.

As found numerous times before by the undersigned, personalized identification information, mental impressions, methods, means and source information as a part of any investigatory notes, summaries or reports must remain confidential. In striking a balance, I do find merit to Defendant's argument that information in these summary note records which demonstrates an opioid related overdose death where the deceased obtained the drugs by other than legally "FDA" authorized prescriptions through illicit illegal activities of others, might be relevant in defense of this case.

Therefore, State is Ordered for good cause shown, production through State's counsel and in statistical numerical form the number of cases throughout the relevant period that required investigation by the Chief Medical Examiner's Office where an opioid overdose death was linked to illegal or illicit drug activity as the cause of death as compared to the number of investigations where and opioid overdose death involved legally prescribed opioid medications which caused an overdose death. To this extent, Defendants' renewed request to compel is **Sustained** in part and State is Ordered to comply on or before 4pm May 17, 2019.

E-Mail Communications and Benefit Manager's "Enhanced Safety and Monitoring Team" Reports

Defendant Groups are now more specifically focused on what they argue is incomplete or nonexistent production of EGID reports State received from pharmacy and doctor benefit managers. Defendants now argue these "Enhanced Safety and Monitoring Team" reports may show overprescribing conduct on the part of pharmacies and/or doctors and actions recommended be taken by the oversight Board. Defendants are now asking for all reports and e-mail correspondence that goes along with each report. This does relate to the Health Choice side of coverage and reimbursement, a cost claim now not being prosecuted by State. Defendants also argue that to the extent State produced records responsive to this request it only produced records from CVS Caremark as script manager, 2016 to present, and are arguing for the undersigned to compel further production from any prior benefit manager.

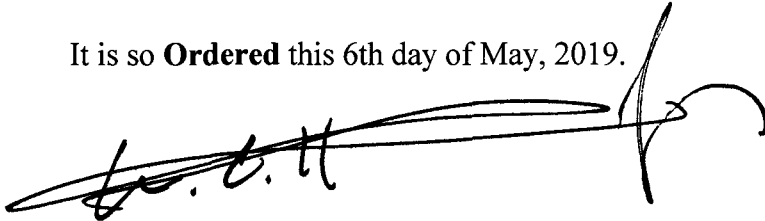
The undersigned's April 16th Order (file stamped April 17th) from the April 12th hearing was specific regarding post March 15th allowable discovery as to this category of documents and was wording taken out of Defendant's pleading request to order production of "E-mails relevant to specific cases involving possible fraud, waste or abuse from CVS Caremark to EGID abuse committee where action was taken as a result of this data being received;". My review of the re-urged Purdue motion and the March 14th e-mail chain argument directed the undersigned to pages 11-15 of Purdue's motion for document category detail requests.

I find Defendant's request now presented to the undersigned has expanded and modified the Purdue motion to compel, now requesting the "Enhanced Safety and Monitoring Team" reports. This request now expands beyond Purdue's document requests involving "Pharmacy Management Consultants" processing of prior authorizations or denials. Further, I must accept as

true State's argument that my April 16th Order was substantially complied with regarding other communications and the Oklahoma Health Care Authority initiative to review pharmacy management consultants processing of prior authorizations.

Therefore, Teva/Cephalon and J&J/Janssen Groups' request to compel is Overruled as an untimely expansion of the Purdue motion.

It is so **Ordered** this 6th day of May, 2019.

A handwritten signature in black ink, appearing to read 'W.C.H.', with a long horizontal flourish extending to the right and a vertical stroke at the end.

William C. Hetherington, Jr.

Special Discovery Master