



IN THE DISTRICT COURT IN AND FOR 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

PURDUE PHARMA, L.P.; PURDUE)
PHARMA, INC.,; THE PURDUE)
FREDERICK COMPANY; TEVA)
PHARMACEUTICALS USA, INC.;)
CEPHALON, INC.; JOHNSON &)
JOHNSON; JANSSEN)

PHARMACEUTICALS, INC.; JANSSEN)
PHARMACEUTICA, INC., n/k/a)

JANSSEN PHARMACEUTICALS, INC.;)
ALLERGAN, PLC f/k/a ACTAVIS PLC,)
f/k/ACTAVIS, INC., f/k/a WATSON)

PHARMACEUTICALS, INC.; WATSON)
LABORATORIES, INC.; ACTAVIS LLC;)
and ACTA VIS PHARMA, INC., f/k/a)
WATSONPHARMA, INC.,)

Defendants.)

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JUN 19 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**JEFFREY HALFORD, DO'S SPECIAL ENTRY OF APPEARANCE AND MOTION TO
QUASH TRIAL SUBPOENA**

Jeffrey Halford, DO ("Halford"), a non-party to this matter, by and through his counsel of record, Winters & King, Inc., specially appears and respectfully submits his Motion to Quash Trial Subpoena issued by Defendants Janssen Pharmaceuticals, Inc., Johnson & Johnson, Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc. ("Issuing Defendants"). Halford moves to quash the Trial Subpoena on the bases of undue burden and improper service. In support hereof, Halford states as follows:

INTRODUCTION

1. On February 22, 2019, Defendants took the videotaped deposition of Halford in Tulsa County, State of Oklahoma, pertaining to the above referenced matter. The videotaped deposition began at 10:21am and concluded at 4:34pm (or approximately five and half hours of deposition time including breaks/recesses), which was nearly the maximum time available to the Parties pursuant to Okla. Stat. tit. 12 § 3230(A)(3) (“deposition upon oral examination shall not last more than six (6) hours”).

2. On June 7, 2019, Halford’s place of employment, Pain Management of Oklahoma, received a trial subpoena (“Subpoena”) from the Issuing Defendants for the above referenced matter. See *Subpoena* (attached as Ex. A). The certified mail containing the subpoena intended for Halford was received and signed by the front desk receptionist for Pain Management of Oklahoma, Ladonna Lavallo.

3. The USPS tracking history for the Subpoena indicates the certified mail containing the subpoena intended for Halford was “Delivered, Left with Individual.” See *USPS Tracking History* (attached as Ex. B).

4. The certified mail receipt containing the Subpoena intended for Halford was not signed by Halford.

5. The Subpoena commands Halford to appear before this Court on June 24, 2019, at 9:00 A.M. “to testify as a witness in the trial” in this case. The Subpoena does not describe the subject matter of the testimony sought.

6. Halford was informed by Pain Management of Oklahoma of the Subpoena on June 11, 2019, or eight (8) business days prior to the date of his requested appearance at trial.

7. Halford, a practicing physician, has appointments with patients much of June 24, 2019. Halford desires in good faith to comply with the Subpoena but the undue burden of (i) traveling to Cleveland County for this trial, and (ii) re-scheduling patient appointments at the last moment due to the improper service and unreasonable delay in issuing the Subpoena will unfairly prejudice Halford.

8. For these reasons and the arguments and authorities set forth herein, this Court should quash the Subpoena issued to Halford.

ARGUMENTS AND AUTHORITIES

A. The Subpoena was improperly served upon Halford.

Okla. Stat. tit. 12 § 2004.1(B)(2) provides in pertinent part, “ ... service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena.” (Emphasis added); see also *Waddle v. Waddle*, 1994 OK CIV APP 1, 868 P.2d 751, 753 (“Service of the subpoena is personal, and must be made in accordance with § 2004.1 to the person named therein. The trial court did not err in refusing to enforce the subpoena duces tecum, which was served only on Appellee's counsel”). The Subpoena submitted by the Issuing Defendants was not accepted by Halford, the person named in the subpoena, but was accepted by Ladonna Lavallo, the front desk receptionist for Pain Management of Oklahoma. Halford did not authorize Ladonna Lavallo to accept service of the Subpoena on his behalf. For these reasons, the Subpoena was not properly served upon Halford and must be quashed.

B. The Subpoena imposes undue burden upon Halford.

Okla. Stat. tit. 12 § 2004.1(C)(3)(a)(4) permits this Court to quash a subpoena “[o]n timely motion... if it ... subjects a person to undue burden.” Subsection (C)(1) places an express “duty upon the party or attorney issuing a subpoena to ‘take reasonable steps to avoid imposing

undue burden or expense on a person subject to that subpoena.” *Young v. Macy*, 2001 OK 4, ¶ 12, 21 P.3d 44, 48. In *Young*, the Oklahoma Supreme Court recognized “case law offers little guidance regarding the application and interpretation of this duty” but that the similarities in § 2004.1(C)(1) and its federal counterpart, Rule 45(C)(1), permitted the Court to look for guidance in the federal jurisprudence in applying and interpreting the duty. *Id.* The Court, in applying federal law, found:

Federal decisions inform us that the duty to avoid undue burden or expense on a person subject to a subpoena exists in all situations - and that the duty is higher when the subpoena is directed to a nonparty... Moreover, the duty may require the party issuing the subpoena to pay any undue expense associated with complying with the subpoena, since non-parties should not be required to subsidize the cost of litigation.

Id., at 48.

The Subpoena will subject Halford, a non-party, to undue burden because Halford’s established medical practice in Tulsa County will be forced to attempt to reschedule numerous patients’ appointments on June 24, 2019 at the last possible moment, and possibly the days subsequent. The resulting prejudice to Halford and his practice could have been reasonably avoided had the Issuing Defendants (i) properly served Halford, and (ii) provided ample time for Halford to make professional arrangements with his affected patients.

In the event that a nonparty is forced to comply with a subpoena, the party issuing the subpoena should be required to pay any undue expense associated with complying with the subpoena, because “nonparties should not be required to subsidize the cost of litigation.” *Young*, 21 P.3d at 48 (ordering the issuing party to pay \$ 664.50 incurred by nonparty in complying with subpoena because it “is not the kind of expense that is routinely or normally absorbed by a non-party witness”). By failing to accommodate Halford and his medical practice and requiring him on 8-business days of notice to clear his medical practice schedule and appear

for the trial, the Issuing Defendants are improperly causing Halford to subsidize the cost of this litigation. Halford and his medical practice are thus being prejudiced by the Subpoena, and pursuant to Okla. Stat. tit. 12 § 2004.1(C)(3)(a)(4), this Court should quash the Subpoena for causing undue burden and prejudice upon Halford and his business practice.

C. Halford's deposition testimony may be used in lieu of his in-person testimony.

As described above, the Parties to this matter took the lengthy and comprehensive videotaped deposition of Halford well before the trial in this matter. Okla. Stat. tit. 12 § 3232(A)(3)(b) provides in pertinent part as follows:

A. USE OF DEPOSITIONS. At the trial ... any part or all of a deposition, so far as admissible under the Oklahoma Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was represented at the taking of the deposition ... in accordance with any of the following provisions:

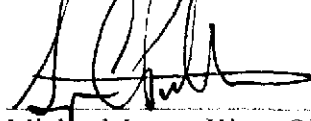
3. The deposition of a witness, whether or not a party may be used for any purpose if the court finds... That the witness does not reside in the county where the action or proceeding is pending...

Sec. 3232 permits the Parties under the Oklahoma Discovery Code to use the February 22, 2019 videotaped deposition of Halford in lieu of his in-person witness testimony. Given the improper service and undue burden imposed upon Halford by the Issuing Parties as argued above, use of the videotaped deposition of Halford is an appropriate alternative to requiring Halford's attendance at trial as a witness. For these reasons, and pursuant to § 3232(A)(3)(b), this Court should quash the Subpoena and permit the Parties to use Halford's deposition testimony in lieu of his in-person witness testimony.

WHEREFORE, Jeffrey Halford, DO, specially appearing, prays this Court issue an Order granting his Motion to Quash, award attorneys' fees and costs upon application, and for such other relief as may be just and proper.

Respectfully Submitted,

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CERTIFICATE OF MAILING

I hereby certify that on this 19th day of June, 2019, I emailed and mailed a true and correct copy of the above and foregoing instrument with the proper postage fully prepaid thereon as follows:

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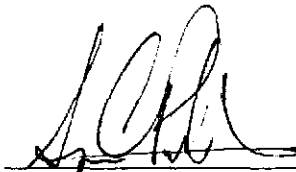
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Spencer C. Pittman

**IN THE DISTRICT COURT IN AND FOR 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.; PURDUE
PHARMA, INC.; THE PURDUE
FREDERICK COMPANY; TEVA
PHARMACEUTICALS USA, INC.;
CEPHALON, INC.; JOHNSON &
JOHNSON; JANSSEN
PHARMACEUTICALS, INC.; JANSSEN
PHARMACEUTICA, INC., n/k/a
JANSSEN PHARMACEUTICALS, INC.;
ALLERGAN, PLC f/k/a ACTAVIS PLC,
f/k/a ACTAVIS, INC., f/k/a WATSON
PHARMACEUTICALS, INC.; WATSON
LABORATORIES, INC.; ACTAVIS LLC;
and ACTAVIS PHARMA, INC., f/k/a
WATSON PHARMA, INC.,**

Defendant.

TRIAL SUBPOENA

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

TO: JEFFREY HALFORD, D.O.
Pain Management of Oklahoma
1751 N. Aspen Avenue
Broken Arrow, OK 74012




GREETINGS:

YOU ARE HEREBY COMMANDED to appear in the courtroom of the **Honorable Thad Balkman, District Judge**, at the **Cleveland County Courthouse, 201 South Jones Avenue, Norman, Oklahoma, 73069** on **June 24, 2019**, at **9:00 a.m.**, to testify as a witness in the trial in the above-captioned case and not depart without leave of the Court and to return each day thereon until this matter is complete.

HEREOF FAIL NOT UNDER PENALTY OF LAW.

Issued this 5th day of June, 2019.

Respectfully submitted,



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AND ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC. n/k/a
JANSSEN PHARMACEUTICALS, INC.**

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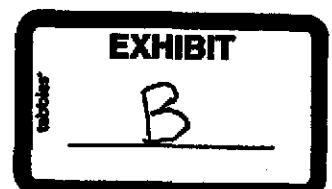
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BROKEN ARROW, OK 74012

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June 7, 2019, 3:16 am

Departed USPS Regional Facility
TULSA OK DISTRIBUTION CENTER



June 6, 2019, 1:23 pm

Arrived at USPS Regional Facility
TULSA OK DISTRIBUTION CENTER

June 6, 2019, 7:44 am

Departed USPS Regional Facility
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June 5, 2019, 10:08 pm

Arrived at USPS Regional Facility
OKLAHOMA CITY OK DISTRIBUTION CENTER

June 5, 2019, 6:17 pm

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NORMAN, OK 73069

June 5, 2019, 5:23 pm

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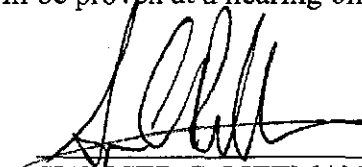
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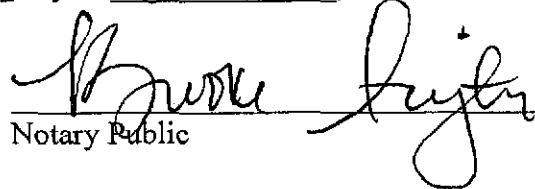
I, Spencer C. Pittman, of legal age and being first duly sworn, do state upon my oath that pursuant to Rule 4(c) of the Rules for District Courts of Oklahoma that the facts in Jeffrey Halford DO's Motion to Quash Trial Subpoena will be proven at a hearing on the Motion.

Further affiant saith not.



SPENCER C. PITTMAN

Subscribed and sworn to before me this 19th day of June, 2019.



Notary Public

My Commission Expires:

