



EAR/mk

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

JUN 20 2019

In the office of the
Court Clerk MARILYN WILLIAMS

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

Plaintiff,)

vs.)

No. CJ-2017-816

PURDUE PHARMA, L.P.; PURDUE)
PHARMA, INC.; THE PURDUE)
FREDERICK COMPANY; TEVA)
PHARMACEUTICALS USA, INC.;)
CEPHALON, INC.; JOHNSON &)
JOHNSON; 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.; ACTAVIS)
LLC; and ACTAVIS PHARMA, INC., f/k/a)
WATSON PHARMA, INC.,)

Defendants.)

**NON-PARTY, GARY SCHICK, M.D.'S SPECIAL APPEARANCE
AND MOTION TO QUASH OR MODIFY TRIAL SUBPOENA**

Dr. Gary Schick is a non-party witness in this case and a physical medicine and rehab specialist practicing with McBride Orthopedic Hospital in Oklahoma City. Pursuant to 12 O.S. § 2004.1(C)(3), his attorneys submit this brief for the benefit of Dr. Schick's patients who are presently scheduled for necessary medical care.

Factual Background

Brief in Support

Pursuant to 12 O.S. § 2004.1(C)(3)(a), "On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it: (1) fails to allow reasonable time for compliance...(2) subjects a person to undue burden..." (12 O.S. § 2004.1(C)(3)(a).) Furthermore, a trial subpoena may be quashed if it "requires disclosure of a non-retained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert study made not at the request of any party..." 12 O.S. § 2004.1 (C)(3)(b)(2).

PROPOSITION I:

PLAINTIFF'S TRIAL SUBPOENA FAILS TO ALLOW REASONABLE TIME FOR COMPLIANCE.

Dr. Schick has not been afforded reasonable time to comply with the Subpoena as required by 12 O.S. § 2004.1(C)(3)(a)(1). Although the Subpoena was served within the requisite statutory time, less than a week is an insufficient and unreasonable amount of time for practicing physician Dr. Schick to coordinate with his numerous patients scheduled for treatment during the trial of the above-captioned matter. Dr. Schick is scheduled to see over twenty-three (23) patients on the date he is under subpoena to testify. To force him to cancel these procedures/medication evaluations causes potential delay in the patients getting necessary medical care. Parties have known about this trial setting and could have issued notice or contacted Dr. Schick and provided sufficient opportunity for him to block out this date. Furthermore, Dr. Schick's testimony can be read at trial in lieu of his attendance. To force his patients to go without necessary medical care while he attends trial poses an unduly burden on him

and his patients and does not allow reasonable time to rearrange his schedule to comply with the subpoena.

**PROPOSITION II:
COMPELLING DR. SCHICK'S TESTIMONY LIVE AT
TRIAL IS UNDULY BURDENSOME TO HIM AND HIS
PATIENTS**

Under 12 O.S. § 2004.1(C)(3)(a)(4), a subpoena may also be quashed or modified if it "subjects a person to undue burden." Quashing a modification of the subpoena is proper under this provision, because enforcement would be overly burdensome. Dr. Schick's reputation is his livelihood. The effects of even one upset patient over a postponed surgery have the potential to affect his practice for years to come. Further, any negative patient outcomes that occur because of the inability to be treated as scheduled could pose risk to Dr. Schick, as well as his patients.

Of note, under § 2004.1(C)(3)(a)(4) quashing or modifying a subpoena is proper if there is an undue burden to "a person"; the legislature did not limit this provision to the effect of a subpoena on parties or witness directly subject to a subpoena. It can thus be assumed that our legislature chose this broad term of art to encompass *any* person affected by a subpoena, directly or indirectly. Because the undue burden to be experienced by Dr. Schick's patients (e.g., prolonged pain and suffering) is imminent, this is a consideration that should weigh heavily on the Court's analysis under 12 O.S. § 2004.1 (C)(3)(a)(4). Statute aside, public policy concerns arising from the health and well-being of people needing invasive procedures and life-saving medications should likewise result in Dr. Schick's Motion to Quash or Modify being sustained if there is any alternative means of procuring his testimony, *i.e.*, a videotaped deposition.

Conclusion

Dr. Schick is a non-party witness. His patients schedule procedures months in advance due to his limited availability, so it is patently unreasonable for a lawyer to compel his attendance at trial in a case he is not a party to on such short notice. It is unfair and unduly burdensome to Dr. Schick, and perhaps more importantly, his patients, to coerce his attendance at trial if his testimony can be properly procured by alternative means such as the reading of his deposition transcript. As such, Plaintiff's Motion to Enforce should be denied, and Dr. Schick's Motion to Quash or Modify should be sustained.

WHEREFORE, Non-party, Gary Schick, M.D., respectfully requests this Court quash or modify the trial subpoena issued

WIGGINS SEWELL & OGLETREE



Erin A. Renegar OBA No. 21790
3100 Oklahoma Tower
210 Park Avenue
Oklahoma City, OK 73102
405/232-1211
405/235-7025 (fax)
erenegar@wsolaw.net

Attorney for non-party,
Gary Schick, M.D.

Certificate of Service

On this 19 day of June, 2019, true and correct copies of the within and foregoing NON-PARTY, GARY SCHICK, M.D.'S SPECIAL APPEARANCE AND MOTION TO QUASH OR MODIFY TRIAL SUBPOENA was mailed, with sufficient postage fully prepaid thereon, to the following counsel of record:

Mr. Larry D. Ottaway
Ms. Amy Sherry Fischer
Mr. Andrew M. Bowman
Mr. Steven J. Johnson
Ms. Jordyn L. Cartmell
Foliart, Huff, Ottaway & Bottom
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, OK 73102
405/232-4633
405/232-3462 (fax)
larryottaway@oklahomacounsel.com
amyfischer@oklahomacounsel.com
andrewbowman@oklahomacounsel.com
stevenjohnson@oklahomacounsel.com
jordyncartmell@oklahomacounsel.com

Mr. Benjamin H. Odom
Mr. John H. Sparks
Mr. Michael W. Ridgeway
Mr. David L. Kinney
Odom, Sparks & Jones, PLLC
HiPoint Office Building, Suite 140
2500 McGee Drive
Norman, OK 73072
405/701-1863
405/310-5394 (fax)
odomb@odomsparks.com
sparksj@odomsparks.com
ridgewaym@odomsparks.com
kinneyd@odomsparks.com

Mr. Stephen D. Brody
O'Melveny & Myers, LLP
1625 Eye Street NW
Washington, DC 20006
202/383-5300
202/383-5414 (fax)

sbrody@omm.com

Mr. Charles C. Lifland
Mr. Wallace Moore Allan
Ms. Sabrina H. Strong
O'melveny & Myers, LLP
400 S. Hope Street
Los Angeles, CA 90071
213/430-6000
213/430-6407 (fax)
clifland@omm.com
tallan@omm.com
sstrong@omm.com

Attorneys for 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.