



STATE OF OKLAHOMA } S.S.
IN THE DISTRICT COURT OF CLEVELAND COUNTY }
CLEVELAND COUNTY }
STATE OF OKLAHOMA }
FILED

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

JAN 04 2019
In the office of the
Court Clerk MARIELYN WILLIAMS

Case No. CJ-2017-816
Honorable Thad Balkman

v.

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

William C. Hetherington
Special Discovery Master

Defendants.

**MOTION FOR ORDER REGARDING
IN CAMERA SUBMISSION FROM PLAINTIFF
AND BRIEF IN SUPPORT**

MOTION

On November 29, Judge Balkman ordered the State to produce to Judge Hetherington, *in camera*, a list of healthcare providers that the State had investigated relating to opioid prescriptions but had not filed a court or administrative action. That Order was memorialized in a Journal Entry filed on December 20, a copy of which is attached as Exhibit 1.

Comes now defendant Watson Laboratories, Inc. and moves for an Order from Judge Hetherington. As ordered by Judge Balkman, "Judge Hetherington shall make a ruling on whether or not materials from any of those investigations should be shared with the defendants." Judge Hetherington should make that ruling on the record (although without naming the cases he determines should not be disclosed).

BRIEF IN SUPPORT

There are several things Judge Hetherington can and should do in reviewing the list *in camera*.

1. **The Description of Why Not.** Judge Balkman specifically ordered the State to explain for each case the reasons no legal action was taken. If the State replies with a vague description

such as "prosecution was declined" or something similar, Judge Hetherington should demand more information. The State needs to disclose sufficient information to allow Judge Hetherington to exercise his judgment on "whether or not materials from any of those investigations should be shared with the defendants."

2. **Defendant Unavailable**. In some instances no action would have been filed because the defendant had become unavailable. For example, the defendant had moved to a different state or was deceased. Non privileged material from those files should be shared with the defendants in this case. There would be no pending investigation to be jeopardized.

3. **Doctor's Resignation**. It might also be that legal action was declined in some cases because the doctor resigned his/her license or something similar. Non privileged materials from those files should be shared with the defendants. There would be no pending investigation to be jeopardized.

4. **No Jurisdiction**. It may be that a case was declined because the agency lacked jurisdiction. Non privileged materials from those files should be produced to the defendants. There would be no pending investigation to be jeopardized.

5. **Civil and Administrative**. Judge Balkman's Order is explicit that the State must disclose to Judge Hetherington criminal, civil and administrative cases. The civil and administrative cases would be expected to be less sensitive than the criminal cases. Further, although the State may argue that some of the documents may reveal sensitive information, that is not the test. Even if there are documents in a file which should not be disclosed, the remaining non privileged documents should be produced.

6. **Public Documents**. Even if no legal action was taken, if there are publicly available documents about a case, those should be shared with the defendants. As was argued before Judge

Balkman, this is discovery. If there are publicly available documents of which the defendants are unaware, the State should be required to disclose them.

7. **Passage of Time**. Another reason further legal action could then be declined by the State is due to the passage of time. Perhaps the statute of limitations had run, witnesses had become unavailable, records could not be obtained, etc. Once again, the non privileged materials should be shared with the defendants.

The criminal statute of limitations is three years. 22 O.S. § 152(H). The Court should be particularly skeptical of any assertion that non privileged documents from a case initiated over three years ago still need to be kept confidential.

8. **Blanket Objections**. The Court should not accept blanket objections or assertions by the State that disclosure is inappropriate. Those arguments were already made by the State, and Judge Balkman rejected those arguments. It is not tenable for the State to argue that of all the cases in which a State agency declined to proceed, every single one of them is still so sensitive that even the non privileged documents cannot be disclosed. Instead, Judge Balkman's Order asks this Court to make "a ruling on whether or not materials from any of those investigations should be shared with the defendants."

CONCLUSION

Judge Hetherington should make an order setting forth his determinations as required by Judge Balkman's Order.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 4 day of January 2019, to the following:

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S485815

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA } STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

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

v.

- (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.

FILED

DEC 20 2018

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

**JOURNAL ENTRY ON DISCOVERY OF CRIMINAL,
CIVIL AND ADMINISTRATIVE PROCEEDINGS**

On the 29th day of November, defendant Watson Laboratories, Inc.'s ("Watson") Objection to the Special Discovery Master's Order on Watson's Motion to Compel Discovery Regarding Criminal and Administrative Proceedings (filed November 13, 2018) came on for hearing. Present for the parties were:

Plaintiff: Trey Duck, Abby Dillsaver, Drew Pate, Reggie Whitten, Brad Beckworth, Ethan Shaner, Dawn Cash, Ross Leonoudakis, Lisa Baldwin and Brooke Churchman
Watson: Robert McCampbell and Harvey Bartle
Purdue: Paul LaFata and Trey Cox
Janssen: Larry Ottaway, Amy Fischer, John Sparks and Steve Brody

Having reviewed the briefs of the parties and received argument of counsel, this Court finds that the motion is granted in part as specified below:

1. The plaintiff shall produce non-sealed charging documents, petitions, informations, indictments, motions, briefs, orders, transcripts, docket sheets and other documents filed with a tribunal in all civil, criminal or administrative proceedings brought by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. For purposes of this Order "Health Care Professional" includes doctors licensed by the Oklahoma Board of Medical Licensure and Supervision, doctors licensed by the Oklahoma Board of Osteopathic Examiners, and dentists licensed by the Oklahoma Board of Dentistry.

2. The plaintiff shall also produce all documents produced to the attorney for the defendant, respondent, or licensee in all civil, criminal or administrative proceedings commenced by a state prosecuting or regulatory authority against any Health Care Professional relating to the prescription of opioids, including but not limited to Harvey Jenkins, Regan Nichols, William Valuck, Roger Kinney, Tamerlane Rozsa, Joshua Livingston, Joseph Knight, and Christopher Moses. However, if such documents are sealed or are grand jury transcripts, such documents need not be produced or will be produced consistent with the Protective Orders currently in place, as appropriate. In items 1 and 2 above, if a document is withheld because it is sealed, a copy of the sealing order will be provided to counsel for the defendant.

3. The plaintiff shall also produce to Judge William Hetherington *in camera* a list identifying all Health Care Professionals previously investigated by the State relating to the prescription of opioids where the investigation did not result in a civil, criminal or administrative

proceeding with the reasons why not. Judge Hetherington shall make a ruling on whether or not materials from any of those investigations should be shared with the defendants. The list shall be produced to Judge Hetherington by January 2, 2019 and shall remain *in camera* and not be part of any production to defendants.

4. The plaintiff shall produce the documents required in items 1 and 2 to the defendants by January ²¹ 2, 2019.

IT IS SO ORDERED this 20th day of December, 2018.

S/Thad Balkman

THAD BALKMAN, DISTRICT JUDGE