



STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }
FILED

JAN 15 2019

**IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA**

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

Plaintiff,)

vs.)

- (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.)

*In the office of the
Court Clerk MARILYN WILLIAMS*

**Case No. CJ-2017-816
Judge Thad Balkman**

**William C. Hetherington
Special Discovery Master**

**THE STATE OF OKLAHOMA'S RESPONSE TO
DEFENDANTS' EMERGENCY MOTION TO COMPEL
PRESCRIPTION DRUG MONITORING PROGRAM ("PDMP") DATA**

Here we go again. As has become a repeated sideshow of frolic and detour to avoid a date with twelve jurors, Defendants once again seek data they cannot have. Nothing is off limits in Defendants' world. Not patient privacy data. Not investigative, legislative and executive privilege data. Nothing. And, when Defendants lose their efforts to get this type of protected data, they

don't stop. They just keep trying to make an end run around the Special Master and Judge Balkman.

This time, Defendants seek access to the State's PDMP data. "By statute, the Oklahoma PDMP data is 'confidential' and is not open to the public." Those are Defendants' words.¹ Defendants admit in their Motion that the very data they seek is statutorily protected from disclosure.

Defendants must make this admission because Title 63, Section 2-309D begins with this unequivocal warning:

The information collected at the central repository pursuant to the Anti-Drug Diversion Act [a.k.a. PDMP data] **shall be confidential** and **shall not be open to the public**.

The statute then lists the branches of law enforcement and medical professionals who may be given access to that data. *See* 63 O.S. § 2-309D(A)-(G). Defendants are not on that list.

The statute again warns that "***any*** unauthorized disclosure of ***any*** information collected at the central repository provided by the Anti-Drug Diversion Act shall be a misdemeanor," and "shall be deemed willful neglect of duty and shall be grounds for removal from office." 63 O.S. § 2-309D(F). Removal from public office is a serious matter that would include elected and appointed officials. That is how serious the confidentiality provisions regarding the PDMP are.

The law is clear: Defendants cannot have this data. To give it to them is a misdemeanor. And if a person gives it to them, that person can be removed from office.

The data Defendants seek through their Motion to Compel clearly is beyond the scope of discovery. It would be criminal to get it. And jobs could be lost if it were allowed.

¹ Defendants' Emergency Motion to Compel Prescription Drug Monitoring Program Data [hereinafter referred to as "Defendants' Motion"] at 5 (Jan. 7, 2019).

But it gets worse. Even if it were not a criminal act to give Defendants this data, which it is, Defendants could not show any need for this data. According to Defendants, PDMP data can be used to track the prescribing and dispensing habits of Oklahoma healthcare professionals.² But, nowhere in Defendants' Motion do they argue that they *need* Oklahoma's PDMP data in order to do that. Nor can they.

This is so because Defendants already track the prescribing and dispensing habits of Oklahoma's healthcare professionals through IMS.³ IMS is a service that obtains and then sells

² See Defendants' Motion at 9 ("The prescribing and dispensing habits of Oklahoma health care professionals goes to the heart of the State's claims. And the PDMP data exists so that it can be used to track those practices. . . . The data clearly shows, without the need for speculation, exactly how, when, and where opioid medications were prescribed and dispensed in Oklahoma.").

³ See [REDACTED]

Deposition of John Hassler, Dec. 11, 2018 [hereinafter "Hassler"] (attached as Exhibit 3), at 12:14-17:

Q: And how does Teva identify high prescribing physicians?

A: Typically by using IMS or Wolters Kluwer data that indicates physicians' prescribing volume.

[REDACTED]

[REDACTED]

Through their targeting efforts over the past two decades, there is arguably no one who has become more versed in the trends of Oklahoma’s prescribing habits than these Defendants. Defendants know who prescribed the most and “exactly how, when, and where opioid medications were prescribed and dispensed in Oklahoma.”⁹ If they want a list of Oklahoma’s highest prescribers, Defendants need look no further than their own “most-valuable targets” lists.

Accordingly, Defendants have no need for this information. They already have it. Providing this data is not proportional.

Oklahoma law does not allow disclosure of the State’s PDMP data. To allow its disclosure is criminal. Further, the Discovery Code is clear: relevancy is not the only factor to be considered; discovery must also be proportional to the needs of the case. Given that Defendants already have access to data that will provide them with the same evidence they seek to glean from Oklahoma’s PDMP data—and given that the Oklahoma Legislature has prohibited disclosure of the data at issue—Defendants’ Motion should be denied.

[REDACTED]

⁹ Defendants’ Motion at 9.

ARGUMENT

The Oklahoma Discovery Code provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence *and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.*

12 O.S. § 3226(B)(1)(a) (emphasis added). The PDMP data at issue here does not meet that standard.

First and foremost, as discussed above, this information is prohibited from public disclosure by statute. *See* 63 O.S. § 2-309D. Indeed, any unauthorized disclosure of this data is considered a crime and is grounds for removal from office. *Id.* at § 2-309D(F).

Second, [REDACTED]

[REDACTED] the burden of producing yet another source of the same information certainly outweighs any benefit Defendants could derive from it. Again, who better to know the highest prescribers in Oklahoma than the companies that built their empires targeting those very prescribers? For Defendants to claim they need this data from the State now—after the decades they spent exploiting the very same information to flood the State with dangerous narcotics—is a farce.

Third, contrary to Defendants' claims, the State's experts have not put the PDMP data at issue. Some of the State's experts are State employees. They are not retained experts. They are experts based upon their careers, skill, experience and qualifications. Some of these experts have (or may have had) access to the PDMP as part of their responsibilities as State employees. But

[REDACTED]


that data has never been used to establish the State's claims in this case. Moreover, just because those witnesses may have had access to the PDMP in their jobs does not mean that such data must be turned over in discovery. For example, any doctor testifying as a witness in a malpractice case has had access to data from every patient she ever treated; however, she would not be required to divulge each and every of her patients' files so that the opposing party could test the veracity of her opinions and the quality of her expertise. That would be absurd. So too is it absurd for these State employees to turn over all sources of information they have had access to in their careers as a public employee.

Fourth, and finally, Defendants grasp at straws in citing *State ex rel. Suttle v. District Court*, 1990 OK CR 31, 795 P.2d 523. *Suttle* was, of course, a criminal case, meaning there was a constitutional requirement that the State produce potentially exculpatory evidence—a requirement that does not apply here. Yet, even with such a requirement, the *Suttle* court still did not require the confidential information at issue to be turned over to the defense; rather, the information was submitted for *in camera* review. *Id.* ¶5. In other words, Defendants have cited nothing for the proposition that this confidential data may be produced to them. Such a decision, especially given that the data does not pertain to these Defendants, would be unprecedented.

CONCLUSION

The PDMP data Defendants seek through their Motion is protected from disclosure by statute. Moreover, it is only duplicative given that Defendants already track prescribing trends of Oklahoma's doctors through their own data. Defendants have provided no good reason for this Court to contravene the express judgment of the Legislature in this matter. Accordingly, Defendants' Motion should be denied.

Respectfully submitted,



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EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

1 IN THE DISTRICT COURT OF CLEVELAND COUNTY

2 STATE OF OKLAHOMA

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

5 Plaintiff,

6 vs.

Case No. CJ-2017-816

7 (1) PURDUE PHARMA, L.P.;
8 (2) PURDUE PHARMA, INC.;
9 (3) THE PURDUE FREDERICK COMPANY;
10 (4) TEVA PHARMACEUTICALS USA, INC.;
11 (5) CEPHALON, INC.;
12 (6) JOHNSON & JOHNSON;
13 (7) JANSSEN PHARMACEUTICALS, INC.;
14 (8) ORTHO-McNEIL-JANSSEN
15 PHARMACEUTICALS, INC., n/k/a
16 JANSSEN PHARMACEUTICALS, INC.;
17 (9) JANSSEN PHARMACEUTICA, INC.;
18 N/k/a JANSSEN PHARMACEUTICALS, INC.;
19 (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,
20 f/k/a ACTAVIS, INC., f/k/a WATSON
21 PHARMACEUTICALS, INC.;
22 (11) WATSON LABORATORIES, INC.;
23 (12) ACTAVIS, LLC; and
24 (13) ACTAVIS PHARMA, INC.,
25 f/k/a WATSON PHARMA, INC.,

Defendants.

3230(C) (5) VIDEOTAPED DEPOSITION

OF THE TEVA/CEPHALON DEFENDANTS

BY AND THROUGH CORPORATE REPRESENTATIVE JOHN HASSLER

TAKEN ON BEHALF OF THE PLAINTIFF

ON DECEMBER 11, 2018, BEGINNING AT 9:07 A.M.

IN OKLAHOMA CITY, OKLAHOMA

VIDEOTAPED BY: C. J. Shelton
REPORTED BY: D. Luke Epps, CSR, RPR

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1 THE VIDEOGRAPHER: We are on the record
2 for the videotaped deposition of John Hassler taken
3 in the case captioned State of Oklahoma vs. Purdue
4 Pharma, et al. Today's date is December 11, 2018.
5 We are on the record at 9:07 a.m. Will counsel
6 state your appearances for the record?

7 MR. DUCK: Trey Duck from Nix Patterson on
8 behalf of the State of Oklahoma.

9 MR. HALL: Nathan Hall, Nix Patterson, on
10 behalf of the State of Oklahoma.

11 MR. FIORE: Mark Fiore, Morgan, Lewis &
12 Bockius, on behalf of the Teva defendants.

13 MR. MERKLEY: Nick Merkley, GableGotwals,
14 on behalf of the Teva defendants.

15 MR. WAY: Evan Way, Crowe & Dunlevy, on
16 behalf of Purdue Pharma.

17 MS. FISCHER: Amy Sherry Fischer for the
18 Janssen defendants.

19 THE VIDEOGRAPHER: The court reporter will
20 now swear the witness.

21 WHEREUPON,

22 JOHN HASSLER,
23 after having been first duly sworn, deposes and
24 says in reply to the questions propounded as
25 follows, to-wit:

1 A Okay.

2 Q Watson Pharma. Actavis or Actavis. Never
3 knew how to say that one. Do you understand that?

4 A Yes.

5 Q So we've got Cephalon, Teva, Watson, and
6 Actavis entities.

7 A Okay.

8 Q I might say Teva, but I'm talking about
9 all of them.

10 A Okay.

11 Q Okay. In the past, Teva has targeted high
12 prescribing physicians; correct?

13 A Yes.

14 Q And how does Teva identify high
15 prescribing physicians?

16 A Typically by using IMS or Wolters Kluwer
17 data that indicates physicians' prescribing volume.

18 Q IMS and what?

19 A Wolters Kluwer.

20 Q And IMS data is pharmacy level data about
21 the number of prescriptions of a particular type of
22 drug and who prescribed them; correct?

23 MR. FIORE: Objection to form.

24 Q (BY MR. DUCK) Among other things?

25 A Yes.

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CERTIFICATE

I, D. Luke Epps, Certified Shorthand

Reporter, do hereby certify that the above-named John Hassler was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case

aforesaid; that the above and foregoing deposition

was by me taken in shorthand and thereafter

transcribed; and that I am not an attorney for nor

relative of any of said parties or otherwise

interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 13th day of December, 2018.



D. Luke Epps, CSR RPR