



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.

For Judge Balkman's
Consideration

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED

APR - 5 2019

In the office of the
Court Clerk MARILYN WILLIAMS

TEVA DEFENDANTS' REPLY IN SUPPORT OF
EMERGENCY OBJECTION TO THE SPECIAL DISCOVERY MASTER'S
ORDER ON CORPORATE REPRESENTATIVE DEPOSITION TOPIC 17

The State repeatedly resisted producing documents relating to criminal and administrative proceedings it initiated against healthcare professionals related to the prescription of opioids. The Court repeatedly rejected the State's arguments and required the State to produce documents relating to this issue. Ignoring the Court's prior rulings that information about opioid-related criminal and administrative proceedings is relevant and discoverable, the State is now resisting having a corporate representative testify about these same issues. Similar to its arguments against

producing the relevant documents, the State's arguments against presenting a witness on this issue lack any factual or legal support. The Court should once again reject the State's erroneous arguments and order it to present a corporate representative on deposition Topic 17.

The Special Discovery Master's Order on Topic 17 should be overruled for several reasons. *First*, Topic 17 covers undisputedly relevant and discoverable information. Neither the State's production of documents nor any previous ruling by this Court eliminate the State's obligation to present a witness to answer questions on this relevant topic. *Second*, the Teva Defendants appropriately tailored their corporate representative deposition topics consistent with their previous representations to this Court. *Third*, the State waived its right to object to Topic 17 because it did not file a motion to quash Topic 17 and delayed notifying the Teva Defendants of its objection to the topic until the last week of fact discovery.

A. Topic 17 Covers Relevant Information And Teva's Right To Take A Deposition On This Topic Has Not Been Limited.

Not once in the State's Response does it dispute the relevancy of Topic 17. This is because the Court has already considered the relevancy of the information covered by Topic 17 on several occasions and ordered the State to produce documents relating to criminal and administrative proceedings against healthcare professionals related to the prescription of opioids. (*See* Teva's Emergency Objection at pp. 2-3, 8). Because the relevancy of Topic 17 is undisputed, the State argues that the Teva Defendants somehow lost their right to take a corporate representative deposition on this topic due to the State's production of documents and/or previous rulings from the Court. As set forth below, these arguments are meritless.

First, the State argues that it should not be required to present a witness on Topic 17 because "Teva already has documents that provide those details" and because "Teva received thousands of documents – tens of thousands of pages of information – related to the State's investigations as a

result of the Court's December 20th Order." (State's Response at pp. 4, 6). This argument is disingenuous and inconsistent with the Oklahoma law. The Oklahoma Discovery code allows discovery "regarding any matter that is relevant ... by one **or more** of the following methods" including both "depositions" and "production of documents." 12 O.S. § 3226 (A)(1)(emphasis added). If the production of documents actually relieved a party from presenting witnesses for depositions, there would be no deposition practice in the majority of civil cases. The State is well aware that is not how discovery works. In fact, the State spent hundreds of hours questioning all the Defendants' witnesses about documents produced in this litigation. The Teva Defendants certainly have the right to question the State about the documents it produced.

Similarly, the State argues that Topic 17 "exceeds what this Court ruled was discoverable regarding State investigations" and that "Teva is not entitled to privileged details of investigations beyond what has been disclosed in filings or through prior discovery." (State's Response at pp. 4, 6). These arguments are just a different way of saying the same thing – the State thinks its document production on this issue eliminates the Teva Defendants' right to take a deposition on the topic. This Court has made no such ruling. The State cites this Court's Journal Entry ordering the production of documents relating criminal and civil proceedings as its support for this argument. (*See* Ex. G to Teva's Emergency Objection). The Journal Entry did not find the documents were being produced in lieu of a deposition on the topic and made no findings on privilege issues. The State's attempt to categorize this Court's order rejecting the State's objections to producing relevant documents into an order that somehow extinguishes the Teva Defendants' right to a deposition on the same relevant topic is truly nonsensical.

B. Teva Appropriately Tailored All Of Its Corporate Representative Deposition Topics, Including Topic 17.

There was an extensive discussion about the scope of the Teva Defendants' corporate representative deposition topics at the February 14, 2019 hearing before this Court. During that discussion, counsel for the Teva Defendants specifically advised the Court that the Teva Defendants intended to send a deposition notice on criminal and administrative investigations of doctors and that they intended on abiding by the Court's previous rulings regarding the confidentiality of patient identities. (*See* Ex. B to Teva's Emergency Objection at p. 52:15-17). At the conclusion of the discussion, the Court stated that it would allow the Teva Defendants to go forward with issuing corporate representative deposition notices and that it would "expect that those deposition notices would reflect what [counsel for Teva Defendants] represented here in court this morning." (*Id.* at p. 72:11-13). The Teva Defendants reissued the deposition notices in the exact manner it informed the Court it would. For the vast majority of the topics, the deposition notices were limited to the Teva Defendants' conduct, the Teva Defendant's medications, the communications with the Teva Defendants, etc. Topic 17, however, cannot be similarly limited. This is because the State's conduct, not the Teva Defendants' conduct, is at issue in Topic 17. The State's argument that the notice for deposition Topic 17 runs afoul of a previous ruling from this Court simply has no support.

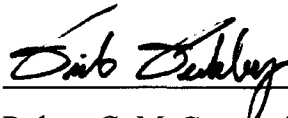
C. The State Waived Any Objections To Presenting A Witness On Topic 17.

The State never filed a motion to quash the deposition notice on Topic 17. Instead, the State simply decided it did not want to produce a witness on this topic and ignored all rules of procedure and the protocol in place for this litigation. The State received the deposition notice for Topic 17 on February 25, 2019, but waited until March 10th, five days before the close of fact discovery, to advise the Teva Defendants of its decision not to present a witness on the topic.

(Teva's Emergency Objection at p. 2). The State cannot be allowed to benefit from this intentional and strategic delay tactic. The Court should find that the State waived its right to object to deposition Topic 17.

D. Conclusion

The Teva Defendants respectfully request that the Court reverse the Special Discovery Master's Order and require the State to produce a Corporate Representative witnesses immediately on Topic 17.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 5th day of April, 2019, to the following:

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