

RETURN DATE: APRIL 29, 2003

STATE OF CONNECTICUT	:	SUPERIOR COURT
	:	
V.	:	JUDICIAL DISTRICT OF HARTFORD
	:	
DEY, INC.;	:	AT HARTFORD
ROXANE LABORATORIES, INC.;	:	
WARRICK PHARMACEUTICALS CORPORATION;	:	
SCHERING-PLOUGH CORPORATION;	:	
AND	:	
SCHERING CORPORATION	:	MARCH 12, 2003

COMPLAINT

FIRST COUNT

1. The plaintiff, STATE OF CONNECTICUT, represented by RICHARD BLUMENTHAL, ATTORNEY GENERAL OF THE STATE OF CONNECTICUT, acting at the request of JAMES T. FLEMING, COMMISSIONER OF CONSUMER PROTECTION, brings this action pursuant to the Connecticut Unfair Trade Practices Act, Chapter 735a of the Connecticut General Statutes, and more particularly, Conn. Gen. Stat. §§ 42-110m and 42-110o, for the purpose of seeking appropriate relief for violations of Conn. Gen. Stat. § 42-110b(a).

2. Defendant DEY, INC., formerly known as DEY LABORATORIES, INC. (“DEY”) is a corporation organized under the laws of the State of Delaware with its principal offices in Napa, California. At all times material to this complaint, DEY, INC. has transacted business in the State of Connecticut by, including but not limited to, manufacturing, selling and distributing pharmaceutical products that are the subjects of this action which are ultimately sold or distributed to providers in the State of Connecticut.

3. Defendant ROXANE LABORATORIES, INC. (“ROXANE”) is a corporation organized under the laws of the State of Delaware with its principal offices in Columbus, Ohio, and is a subsidiary of BOEHRINGER INGELHEIM PHARMACEUTICALS, INC., headquartered in Ridgefield, CT. At all times material to this complaint, ROXANE has transacted business in the State of Connecticut by, including but not limited to, manufacturing, selling and distributing pharmaceutical products that are the subjects of this action, which are ultimately sold or distributed to providers in the State of Connecticut.

4. Defendant WARRICK PHARMACEUTICALS CORPORATION (“WARRICK”) is a corporation organized under the laws of the State of Delaware with its principal offices in Reno, Nevada, although on information and belief its principal offices are actually in the State of New Jersey. At all times material to this complaint, WARRICK has transacted business in the State of Connecticut by, including but not limited to, manufacturing, selling and distributing pharmaceutical products that are the subjects of this action which are ultimately sold or distributed to providers in the State of Connecticut.

5. Defendant SCHERING-PLOUGH CORPORATION (“SCHERING-PLOUGH”) is a corporation organized under the laws of the State of New Jersey with its principal offices in Kenilworth, New Jersey. At all times material to this complaint, SCHERING-PLOUGH has transacted business in the State of Connecticut by, including but not limited to, manufacturing, selling and distributing pharmaceutical products that are the subjects of this action which are ultimately sold or distributed to providers in the State of Connecticut. SCHERING-PLOUGH conducts much of its pharmaceutical business through

Schering Laboratories, described by it as “the U.S. pharmaceutical arm of Schering-Plough Corporation.”

6. Defendant SCHERING CORPORATION (“SCHERING”) is a corporation organized under the laws of the State of New Jersey with its principal offices in Madison, New Jersey. At all times material to this complaint, SCHERING has transacted business in the State of Connecticut by, including but not limited to, manufacturing, selling and distributing pharmaceutical products that are the subjects of this action which are ultimately sold or distributed to providers in the State of Connecticut.

7. SCHERING CORPORATION AND WARRICK CORPORATION are wholly owned subsidiaries of SCHERING-PLOUGH CORPORATION. SCHERING CORPORATION is responsible for sales and marketing of brand name drugs. WARRICK CORPORATION is responsible for sales and marketing of generic drugs. SCHERING-PLOUGH CORPORATION is the parent corporation of numerous other corporations including defendant WARRICK CORPORATION and defendant SCHERING CORPORATION.

8. Each of the defendants has, during all times relevant to this complaint, engaged in the trade or commerce of manufacturing, selling and/or distributing pharmaceutical products which are ultimately sold or distributed to providers in the State of Connecticut.

9. Whenever reference is made in this complaint to any representation, act or transaction of any of the defendants, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents or representatives while actively engaged in the course and scope of their employment, did or authorized such representations, acts, or transactions on behalf of said defendants.

I. REIMBURSEMENT FOR PRESCRIPTION DRUGS UNDER THE CONNECTICUT MEDICAL ASSISTANCE PROGRAM.

10. The State of Connecticut Department of Social Services (“DSS”) administers the Medical Assistance Program. The Medical Assistance Program includes the Connecticut Medicaid program, as well as the Connecticut Pharmaceutical Assistance Contract to the Elderly and the Disabled (“ConnPACE”), State Administered General Assistance (“SAGA”), General Assistance (“GA”) and Connecticut AIDS Drug Assistance Program (“CADAP”). The Medical Assistance Program pays for medical benefits, including prescription drugs, for certain low income and disabled Connecticut residents. The Medical Assistance Program reimburses physicians, pharmacists, and other health care providers for certain drugs prescribed for, dispensed, and/or administered to, Medical Assistance Program recipients.

11. Within the Medical Assistance Program many drugs are paid for on a fee for service basis, in some cases (i.e. Medicaid) with no copayment, and in other cases (i.e. ConnPACE) with a small copayment. This fee for service program includes certain drugs which are dispensed by pharmacies in accordance with prescriptions as well as certain drugs administered to Medical Assistance Program recipients by a physician or other health care provider.

12. The Medical Assistance Program will pay for fee for service drugs dispensed by a pharmacy after the pharmacy or other provider submits a claim for payment to the Medical Assistance Program or the designated claims payment agent of the Medical Assistance Program.

13. The Medical Assistance Program will pay for fee for service drugs administered to a Medical Assistance Program recipient by a physician or other provider following the physician's or other provider's submission of a claim for payment to the Medical Assistance Program or the designated claims payment agent of the Medical Assistance Program. Such a claim may include a charge for the office visit as well as a separate charge for the administered drug.

14. The amount that the Medical Assistance Program pays for drugs on a fee for service basis is governed by various Connecticut laws and regulations governing the Medical Assistance Program and its component programs.

15. Under Conn. Gen. Stat. §17b-280 and Regulations of Connecticut State Agencies §17-134d-81b, the Medical Assistance Program generally reimburses fee for service drugs which are dispensed by a pharmacy to a Medical Assistance Program recipient on the basis of: (a) the "federal acquisition cost/federal upper limit ..." ("FAC" or "FUL") or (b) the "estimated acquisition cost" ("EAC") as follows: (1) where there is no FAC or FUL the amount reimbursed is the lowest of the EAC, the usual and customary charge or the amount billed, and (2) where there is a FAC or FUL the amount reimbursed is the lowest of the FAC or FUL, the EAC, the usual and customary charge or the amount billed.

16. Under Conn. Gen. Stat. §17b-280, and Regulations of Connecticut State Agencies §§17b-262-448(q), 17b-262-462(j), and 17b-262-611(b)(4), the Medical Assistance Program generally reimburses for fee for service drugs that are administered to a Medical Assistance Program recipient by

a provider on the basis of the EAC. The EAC is utilized by DSS in promulgating fee schedules for providers that administer drugs.

17. Under Conn. Gen. Stat. §17b-494 and Regulations of Connecticut State Agencies §17b-490 *et seq.* as modified by Regulations of Connecticut State Agencies §17b-262-684 *et seq.*, ConnPACE reimburses for fee for service drugs that are dispensed by a pharmacy to a Medical Assistance Program recipient as follows: (1) for the period prior to January 1, 2002 at the “reasonable cost” (defined in Regulations of Connecticut State Agencies §17b-490(c)) of the drug, minus a copayment, with the option of paying the price paid directly by the pharmacy to the manufacturer for the drug, minus a copayment; and, (2) for the period beginning January 1, 2002, the lowest of (a) the EAC minus a copayment, (b) the FUL minus a copayment, (c) the billed amount minus a copayment, or (d) the usual and customary charge minus a copayment.

18. Under Regulations of Connecticut State Agencies §§17-134d-81b(9) and 17b-262-685(12) the EAC is the DSS’s “best estimate of the price as related to the *average wholesale price generally and currently paid by providers* for a drug marketed or sold by a particular manufacturer or labeler, as identified by the national drug code (NDC).” (Emphasis added).

19. The Connecticut Medical Assistance Program utilizes “Average Wholesale Price” (“AWP”) as a benchmark or reference point to determine the EAC. The term “Average Wholesale Price” is defined by Regulations of Connecticut State Agencies §§17-134d-81b(1), 17b-262-685(2) and 17b-262-685(12). Under these regulatory provisions the Connecticut Medical Assistance Program looks to

nationally recognized publications or national drug databases which obtain their pricing information directly from manufacturers when reporting “Average Wholesale Price”.

20. In addition, beginning January 1, 2003, pursuant to Conn. Public Act #02-1, § 118 (May 9, 2002 Special Session) and Conn. Public Act #02-7, §104 (May 9, 2002 Special Session) maximum allowable costs have been established for certain generic prescription drugs based upon, but not limited to, actual acquisition costs.

21. Based upon the above requirements the Connecticut Medical Assistance Program generally pays or has paid pharmacists and certain other providers an EAC as follows, excluding any applicable copayments: (1) for the period prior to October 1, 1995, the AWP of the drug minus 8%, plus a dispensing fee; (2) for the period beginning October 1, 1995, the AWP minus 12%, plus a dispensing fee; and, (3) beginning January 1, 2003, the AWP minus 40%, plus a dispensing fee, for certain generic drugs. Where there is a FUL and the FUL is lower than the EAC, the Connecticut Medical Assistance Program payment is capped by the FUL.

22. Based upon the above requirements, the Connecticut Medical Assistance Program generally pays physicians or other health care providers for certain drugs administered to Medical Assistance Program recipients an EAC as follows: 90.25% of the AWP.

II. THE SCHEME: ARTIFICIALLY INFLATING THE AWP AND OTHER PRICING INFORMATION.

A. The Defendants Misrepresented AWP and Other Pricing Information That Was Utilized By the Medical Assistance Program.

23. Defendants actively gathered and updated information concerning drug reimbursement formulas used by state and federal government health care benefit programs, specifically including the State of Connecticut. At all times relevant to this complaint, each of the defendants was aware of the methodology used by the Connecticut Medical Assistance Program to reimburse providers for pharmaceuticals.

24. State and federal government health plans, as well as numerous commercial health care third-party payers, use information reported by various commercial price reporting services, including specific information concerning drug prices, in determining the calculation of the reimbursement amount for the covered prescription drug benefit.

25. During times relevant to this complaint each of the defendants has made or caused to be made, directly or indirectly, explicitly or by implication, representations of the AWPs and other pricing information for its drugs to the various price reporting services, including First Data Bank (f/n/a the *Blue Book*) and Medical Economics, Inc. (the *Red Book*). These price reporting services do not independently determine the defendants' AWPs. Thus, the defendants knew that the AWPs and other pricing information they provided to the price reporting services were the AWPs and other pricing information that would be reported to state and federal government health care programs. The

Connecticut Medical Assistance Program utilizes the reported AWP and other pricing information which defendants provided to the price reporting services.

B. The Defendants Manipulated the “Spread” Between the Reported AWP and the Actual Average Cost of a Drug.

26. In truth and in fact, the defendants’ actual average wholesale prices for certain drugs were considerably lower than the AWP they reported to the reporting services.

27. Each of the defendants refers to the difference between the reported AWP and the average of the wholesale price based upon a good faith and reasonable estimate utilizing the pricing and transaction information available to the defendants in conducting their ordinary business affairs as the “spread” or, alternatively, “return to practice” or “return on investment.”

28. Each of the defendants knowingly and intentionally created a “spread” on its drugs and used the “spread” to increase its market share of these drugs, thereby increasing its own profits. Specifically, each of the defendants induced health care providers to purchase its pharmaceuticals, rather than those of competitors, by marketing the wider “spread” on each of the defendants’ pharmaceuticals to the providers, knowing that the larger “spreads” would allow the health care providers to receive more money, and make more of a profit, at the expense of the Connecticut Medical Assistance Program.

29. Each of the defendants knowingly and intentionally inflated the prices they each reported as the AWP for their pharmaceuticals, including those identified in Tables 1-1, 1-2 and 1-3. Each of the defendants knew that its inflation of prices reported as the AWP for its pharmaceuticals would cause the Connecticut Medical Assistance Program to pay providers excessive amounts for these

pharmaceuticals, which had the effect of causing the Connecticut Medical Assistance Program to unknowingly subsidize defendants' schemes to retain and/or increase its market share.

30. The inflated AWP of each of the defendants greatly exceeded the average of the wholesale price based upon a good faith and reasonable estimate utilizing the pricing and transaction information available to the defendants in conducting their ordinary business affairs. Thus each of the defendants' AWP for these drugs bears no relation to any purchase price at which a provider is able to procure these drugs. Moreover, the defendants' AWP bears no relation to the "average wholesale price" as that term is defined in Regulations of Connecticut State Agencies §§17-134d-81b(1), 17b-262-685(2) and 17b-262-685(12).

31. Tables 2-1, 2-2 and 2-3 attached to this complaint provide illustrative examples of the inflated AWP of each of the defendants and the impact of those AWP on the "spread."

32. At the same time that each of the defendants were inflating their reported AWP used by the Connecticut Medical Assistance Program they were lowering the prices they charged to health care providers for their pharmaceuticals, thus creating increasingly dramatic "spreads" to sell more of their drugs, and/or increasing their spreads to be larger than the spreads of their competitors in order to retain or increase their market share.

33. Upon information and belief, in addition to manipulating its reported AWP and other pricing information, each of the defendants used free goods, "educational grants" and other incentives to induce

health care providers to use its pharmaceuticals, all of which lowered the actual prices of the pharmaceuticals and created even wider “spreads.”

III. VIOLATIONS OF CONNECTICUT UNFAIR TRADE PRACTICES ACT (“CUTPA”).

34. In the course of the aforementioned trade or commerce, from and including January 1, 1993, each of the Defendants has made or caused to be made, directly or indirectly, explicitly or by implication, representations of the AWP of its pharmaceuticals to various reporting services including First Data Bank (f/n/a the *Blue Book*) and/or Medical Economics, Inc. (the *Red Book*).

35. In truth and in fact, the AWP provided to these reporting services were false as they did not represent true average wholesale prices in that:

- (a) the actual average wholesale prices paid by pharmacies, physicians and other health care providers were significantly lower than those which were reported, and/or
- (b) the reported AWP did not include offsets to the actual sales prices of specified pharmaceuticals, such as discounts, rebates, off-invoice pricing, free goods, cash payments, chargebacks, and/or other financial incentives which further lowered the actual average wholesale prices of these pharmaceuticals.

36. Each of the defendants made the foregoing misrepresentations with the knowledge and/or intent that the Connecticut Medical Assistance Program would use the reported AWP in its reimbursement methodology, resulting in pharmacies, physicians and other health care providers being reimbursed at higher rates and therefore, increasing the “spread” on each of the defendants’ pharmaceuticals.

37. Each of the defendants marketed this artificially created “spread” as a financial benefit to health care providers in order to influence the providers to administer and/or purchase their pharmaceutical products.

38. As a direct result of the defendants’ misrepresentations, the Connecticut Medical Assistance Program has been injured by having to pay grossly excessive amounts for each of the defendants’ pharmaceuticals on a fee for service basis.

39. The defendants’ misrepresentations, as alleged herein, have been and are material, false, and likely to mislead and, therefore, constitute deceptive acts or practices in violation of Conn. Gen. Stat. §42-110b(a).

SECOND COUNT

1. – 39. Paragraphs 1 through 39 of the First Count are hereby made paragraphs 1 through 39 of the Second Count as if fully set forth.

40. Defendants have violated Conn. Gen. Stat. §42-110b(a) willfully.

THIRD COUNT

1. – 38. Paragraphs 1 through 38 of the First Count are hereby made paragraphs 1 through 38 of the Third Count as if fully set forth.

39. Defendants’ course of wrongful conduct is immoral, unethical, oppressive, unscrupulous and causes substantial injury.

40. Defendants' course of wrongful conduct alleged herein violates the public policy of the State of Connecticut which prohibits the offering or the payment of cash or a benefit to influence the purchase of goods or services for which reimbursement is claimed from a state or federal agency, as embodied in Conn. Gen. Stat. §53a-161d.

41. The defendants' acts and practices, as alleged herein, constitute unfair acts or practices in violation of Conn. Gen. Stat. §42-110b(a).

FOURTH COUNT

1. – 41. Paragraphs 1 through 41 of the Third Count are hereby made paragraphs 1 through 41 of the Fourth Count as if fully set forth.

42. Defendants have violated Conn. Gen. Stat. §42-110b(a) willfully.

FIFTH COUNT

1. - 10. Paragraphs 1 through 10 of the First Count are hereby made paragraphs 1 through 10 of the Fifth Count as if fully set forth.

I. REIMBURSEMENT FOR PRESCRIPTION DRUGS FOR CONSUMERS UNDER MEDICARE.

11. The federal Medicare program pays for a portion of the cost of a limited number of prescription drugs.

12. Medicare is a health benefit program created by federal law for individuals who are 65 and older or who are disabled. 42 U.S.C. §§1395, *et seq.* Medicare is divided into two primary components: Medicare Part A and Medicare Part B.

13. Medicare Part A is funded primarily by a federal payroll tax, premiums paid by Medicare beneficiaries and appropriations from Congress. Medicare Part A generally pays for inpatient services for eligible beneficiaries in hospital, hospice and skilled nursing facilities, as well as some home healthcare services. 42 U.S.C. §§1395e — 42 U.S.C. §§1395i-5. Prescription drugs are covered under Medicare Part A only if they are administered on an inpatient basis in a hospital or similar setting.

14. Medicare Part B is optional to beneficiaries and covers some healthcare benefits not provided by Medicare Part A. Medicare Part B is funded by appropriations from Congress and premiums paid by Medicare beneficiaries who choose to participate in the program. 42 U.S.C. §§1395j — 42 U.S.C. §§1395w-4. Medicare Part B pays for some types of prescription drugs that are not administered in a hospital setting. These typically include drugs administered by a physician or other provider in an outpatient setting, some orally administered anti-cancer drugs and anti-emetics (drugs which control the side effects caused by chemotherapy), and drugs administered through durable medical equipment such as a nebulizer. 42 U.S.C. §1395k(a); 42 U.S.C. §1395x(s)(2); 42 C.F.R. §405.517.

15. The drugs listed in Tables 3-1, 3-2 and 3-3 are drugs that may be covered by Medicare Part B.

16. Medicare generally uses the “average wholesale price” (“AWP”) in determining the amount that a provider will be paid for a drug. The adjusted cost that Medicare will allow for drugs others than

multi-source drugs is the lower of the actual charge or 95% of the AWP for the drug. For multi-source drugs the adjusted cost that Medicare will allow is “the lesser of the median average wholesale price for all sources of the generic form of the drug ... or the lowest average wholesale price of the brand name forms of the drug...” 42 CFR §405.517(c). Prior to November 1998 the adjusted cost that Medicare allowed for drugs other than multi-source drugs was the lower of the estimated acquisition cost or the average wholesale price. Prior to November 1998 for multi-source drugs the adjusted cost that Medicare allowed was the lower or the estimated acquisition cost or the wholesale price that was “the median price from all sources of the generic form of the drug.” 56 Federal Register 59621 (November 25, 1991). Medicare will pay 80% of this adjusted cost and the Medicare beneficiary is responsible for the remaining 20% as a copayment. 42 U.S.C. §1395l(a); 42 U.S.C. §1395u(o). If the Medicare beneficiary is also a Connecticut Medicaid recipient, then the 20% copayment is actually paid for by DSS.

II. THE SCHEME: ARTIFICIALLY INFLATING THE AWP AND OTHER PRICING INFORMATION.

A. The Defendants Misrepresented Pricing Information That Was Utilized To Pay To Determine Reimbursement For Drugs Provided To Connecticut Consumers Who Were Medicare Beneficiaries.

17. Defendants actively gathered and updated information concerning drug reimbursement formulas used by state and federal government health care benefit programs, specifically including Medicare. At all times relevant to this complaint, each of the defendants was aware of the methodology used by Medicare to reimburse providers for pharmaceuticals.

18. State and federal government health plans, as well as numerous commercial health care third-party payers, use information reported by various commercial price reporting services, including specific information concerning drug prices, in determining the calculation of the reimbursement amount for the covered prescription drug benefit.

19. During times relevant to this complaint each of the defendants has made or caused to be made, directly or indirectly, explicitly or by implication, representations of the AWP and other pricing information for its drugs to the various price reporting services, including First Data Bank (f/n/a the *Blue Book*) and Medical Economics, Inc. (the *Red Book*). These price reporting services do not independently determine the defendants' AWP. Thus, the defendants knew that the AWP and other pricing information they provided to the price reporting services were the AWP and other pricing information that would be reported to state and federal government health care programs. Medicare utilizes the reported AWP and other pricing information which defendants provided to the price reporting services.

B. The Defendants Manipulated the “Spread” Between the Reported AWP and the Actual Average Cost of a Drug.

20. In truth and in fact, the defendants' actual average wholesale prices for certain drugs were considerably lower than the AWP they reported to the reporting services.

21. Each of the defendants refers to the difference between the reported AWP and the average of the wholesale price based upon a good faith and reasonable estimate utilizing the pricing and transaction

information available to the defendants in conducting their ordinary business affairs as the “spread” or, alternatively, “return to practice” or “return on investment.”

22. Each of the defendants knowingly and intentionally created a “spread” on its drugs and used the “spread” to increase its market share of these drugs, thereby increasing its own profits. Specifically, each of the defendants induced health care providers to purchase its pharmaceuticals, rather than those of competitors, by marketing the wider “spread” on each of the defendants’ pharmaceuticals to the providers, knowing that the larger “spreads” would allow the health care providers to receive more money, and make more of a profit, at the expense of Medicare and CT Medicare beneficiaries.

23. Each of the defendants knowingly and intentionally inflated the prices they each reported as the AWP for their pharmaceuticals, including those identified in Tables 3-1, 3-2 and 3-3. Each of the defendants knew that its inflation of prices reported as the AWP for its pharmaceuticals would cause Medicare and CT Medicare beneficiaries to pay providers excessive amounts for these pharmaceuticals, which had the effect of causing Medicare and CT Medicare beneficiaries to unknowingly subsidize defendants’ schemes to retain and/or increase its market share.

24. The inflated AWP of each of the defendants greatly exceeded the average of the wholesale price based upon a good faith and reasonable estimate utilizing the pricing and transaction information available to the defendants in conducting their ordinary business affairs. Thus each of the defendants’ AWP for these drugs bears no relation to any purchase price at which a provider is able to procure these drugs.

25. Table 4-1 attached to this complaint provides illustrative examples of the inflated AWP's of each of the defendants and the impact of those AWP's on the "spread."

26. At the same time that each of the defendants were inflating their reported AWP's used by Medicare they were lowering the prices they charged to health care providers for their pharmaceuticals, thus creating increasingly dramatic "spreads" to sell more of their drugs, and/or increasing their spreads to be larger than the spreads of their competitors in order to retain or increase their market share.

27. Upon information and belief, in addition to manipulating its reported AWP's and other pricing information, each of the defendants used free goods, "educational grants" and other incentives to induce health care providers to use its pharmaceuticals, all of which lowered the actual prices of the pharmaceuticals and created even wider "spreads."

III. VIOLATIONS OF CONNECTICUT UNFAIR TRADE PRACTICES ACT ("CUTPA").

28. In the course of the aforementioned trade or commerce, from and including January 1, 1993, each of the Defendants has made or caused to be made, directly or indirectly, explicitly or by implication, representations of the AWP's of its pharmaceuticals to various reporting services including First Data Bank (f/n/a the *Blue Book*) and/or Medical Economics, Inc. (the *Red Book*).

29. In truth and in fact, the AWP's provided to these reporting services were false as they did not represent true average wholesale prices in that:

(a) the actual average wholesale prices paid by pharmacies, physicians and other health care providers were significantly lower than those which were reported, and/or

(b) the reported AWP did not include offsets to the actual sales prices of specified pharmaceuticals, such as discounts, rebates, off-invoice pricing, free goods, cash payments, chargebacks, and/or other financial incentives which further lowered the actual average wholesale prices of these pharmaceuticals.

30. Each of the defendants made the foregoing misrepresentations with the knowledge and/or intent that Medicare would use the reported AWP in their reimbursement methodology, resulting in pharmacies, physicians and other health care providers being reimbursed at higher rates and therefore, increasing the “spread” on each of the defendants’ pharmaceuticals.

31. Each of the defendants marketed this artificially created “spread” as a financial benefit to health care providers in order to influence the providers to administer and/or purchase their pharmaceutical products.

32. As a direct result of the defendants’ misrepresentations, Medicare and Connecticut Medicare beneficiaries have been injured by having to pay grossly excessive amounts for each of the defendants’ pharmaceuticals, including Connecticut Medicare beneficiaries in some instances paying a deductible for a drug that was greater than the actual cost of the drug.

33. The defendants’ misrepresentations, as alleged herein, have been and are material, false, and likely to mislead and, therefore, constitute deceptive acts or practices in violation of Conn. Gen. Stat. §42-110b(a).

SIXTH COUNT

1. – 33. Paragraphs 1 through 33 of the Fifth Count are hereby made paragraphs 1 through 33 of the Sixth Count as if fully set forth.

34. Defendants have violated Conn. Gen. Stat. §42-110b(a) willfully.

SEVENTH COUNT

1. – 32. Paragraphs 1 through 32 of the Fifth Count are hereby made paragraphs 1 through 32 of the Seventh Count as if fully set forth.

33. Defendants' course of wrongful conduct is immoral, unethical, oppressive, unscrupulous and has caused substantial injury.

34. Defendants' course of wrongful conduct alleged herein violates the public policy of the State of Connecticut which prohibits the offering or the payment of cash or a benefit to influence the purchase of goods or services for which reimbursement is claimed from a state or federal agency, as embodied in Conn. Gen. Stat. §53a-161d.

35. The defendants' acts and practices, as alleged herein, constitute unfair acts or practices in violation of Conn. Gen. Stat. §42-110b(a).

EIGHTH COUNT

1. – 35. Paragraphs 1 through 35 of the Seventh Count are hereby made paragraphs 1 through 35 of the Eighth Count as if fully set forth.

36. Defendants have violated Conn. Gen. Stat. §42-110b(a) willfully.

DEMAND FOR RELIEF

WHEREFORE, pursuant to Conn. Gen. Stat. §§42-110m, 42-110o, the State of Connecticut requests the following relief:

1. A finding that each of the defendants has engaged in trade or commerce;
2. A finding that each of the defendants has engaged in unfair or deceptive acts or practices in the course of trade or commerce which constitute violations of the Connecticut Unfair Trade Practices Act;
3. An order preliminarily and permanently enjoining each of the defendants from the use of acts or practices that violate the Connecticut Unfair Trade Practices Act, including, but not limited to, the unlawful acts and practices pleaded in this Complaint;
4. An order preliminarily and permanently enjoining each of the defendants to take whatever actions are necessary to abate the use of acts or practices that violate the Connecticut Unfair Trade Practices Act, including, but not limited to, the unlawful acts and practices pleaded in this Complaint;
5. An order requiring each of the defendants to pay restitution to the State of Connecticut and to each and every person or entity of any sort that made payments for drugs that were excessive as a result of the acts or practices that violate the Connecticut Unfair Trade Practices Act, as alleged herein;
6. An order requiring each of the defendants to submit to an accounting;
7. An order requiring each of the defendants to pay a civil penalty in an amount not to exceed \$5000 per violation for each willful violation of the Connecticut Unfair Trade Practices Act;

8. An order requiring each of the defendants to pay the costs for the investigation and prosecution of this action, including reasonable attorneys' fees;
9. Such other relief as is just and equitable to effectuate the purposes of this action.

Dated at Hartford, Connecticut, this 12th day of March, 2003.

**PLAINTIFF
STATE OF CONNECTICUT**

BY: _____
RICHARD BLUMENTHAL
ATTORNEY GENERAL

Robert B. Teitelman (Juris # 085053)
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TABLE 1-1**DEY, INC.**

DRUG	DOSAGE	NDC#
ALBUTEROL AEROSOL	90 MCG	49502-0303-17
ALBUTEROL AEROSOL	90 MCG	49502-0333-17
ALBUTEROL SULFATE	.83 MG/ML	49502-0697-03
ALBUTEROL SULFATE	.83 MG/ML	49502-0697-60
ALBUTEROL SULFATE	5 MG/ML	49502-0105-01
ALBUTEROL SULFATE	5 MG/ML	49502-0196-20
CROMOLYN SODIUM	20 MG/2 ML	49502-0689-02
CROMOLYN SODIUM	20 MG/2 ML	49502-0689-12
IPRATROPIUM BROMIDE	.2 MG	49502-0685-03
IPRATROPIUM BROMIDE	.2 MG	49502-0685-33
IPRATROPIUM BROMIDE	.2 MG	49502-0685-60

TABLE 1-2

**WARRICK PHARMACEUTICALS CORPORATION/ SCHERING CORPORATION/
SCHERING-PLOUGH CORPORATION**

DRUG	DOSAGE	NDC#
ALBUTEROL AEROSOL	90 MCG	59930-1560-01
ALBUTEROL SULFATE	.83 MG/ML	59930-1500-06
ALBUTEROL SULFATE	.83 MG/ML	59930-1500-08
ALBUTEROL SULFATE	2 MG/5ML	59930-1510-05
ALBUTEROL SULFATE	5 MG/ML	59930-1515-04
CLARITIN	10 MG	00085-0458-03
CLARITIN D	24 HOUR	00085-1233-01
CLOTRIMAZOLE	1% CREAM	59930-1570-02
CLOTRIMAZOLE	1% CREAM	59930-1570-03
ISOSORBIDE MONONITRATE	30 MG	59930-1502-01

ISOSORBIDE MONONITRATE	60 MG	59930-1549-01
ISOSORBIDE MONONITRATE	120 MG	59930-1587-01
LABETALOL HCL	100 MG	59930-1602-01
LABETALOL HCL	200 MG	59930-1636-01
LABETALOL HCL	300 MG	59930-1653-01
PERPHENAZINE	4 MG	59930-1603-01
PERPHENAZINE	8 MG	59930-1605-01
PERPHENAZINE	16 MG	59930-1610-01

TABLE 1-3

ROXANE LABORATORIES, INC.

DRUG	DOSAGE	NDC#
AZATHIOPRINE	50 MG	00054-4084-25
FUROSEMIDE	20 MG - 100	00054-4297-25
FUROSEMIDE	20 MG - 1000	00054-4297-31
FUROSEMIDE	40 MG - 100	00054-4299-25
FUROSEMIDE	40 MG - 1000	00054-4299-31
FUROSEMIDE (ORAL)	10 MG/ML	00054-3294-50
HALOPERIDOL	5 MG - 100	00054-4345-25
HALOPERIDOL	10 MG - 100	00054-4346-25
HALOPERIDOL (LACTATE)	2 MG/ML	00054-3350-50
HYDROMORPHONE	8 MG	00054-4370-25
HYDROXYUREA	500 MG	00054-2247-25
IPRATROPIUM BROMIDE	.2 MG/ML	00054-8402-11
LACTULOSE	10G/15ML	00054-3486-63
LIDOCAINE HCL VISCOUS	20 MG/ML	00054-3500-49
LITHIUM CARBONATE	300 MG - 100	00054-4527-25
LITHIUM CARBONATE	300 MG - 1000	00054-4527-31
LITHIUM CARBONATE	300 MG - 100	00054-2527-25

LITHIUM CARBONATE	300 MG - 1000	00054-2527-31
MARINOL CAP	5 MG	00054-2602-11
MEPERIDINE HCL	50 MG/5 ML	00054-3545-63
MEPERIDINE HCL	100 MG	00054-4596-25
METHADONE HCL	40 MG	00054-4547-25
METHADONE HCL	10 MG	00054-4571-25
NAPROXEN SODIUM	550 MG	00054-4639-25
NEOMYCIN SULFATE	500 MG	00054-4600-25
ORAMORPH SR	30 MG	00054-4805-25
ORAMORPH SR	60 MG	00054-4792-25
ORAMORPH SR	100 MG	00054-4793-25
OXYCODONE W/ ACETAMINOPHEN	5 – 500 MG	00054-2795-25
ROXICET	5 – 325 MG - 100	00054-4650-25
ROXICET	5 – 325 MG - 500	00054-4650-29
ROXICODONE	5 MG	00054-4657-25
SODIUM POLYSTYRENE SULFONATE	15G/60 ML	00054-3805-63

TABLE 2-1

DEY, INC.

DRUG	NDC #	YEAR	AWP	ACTUAL	SPREAD	CT % OVERCHARGE
ALBUTEROL	49502-0303-17	1996	\$ 21.70	\$ 3.25	\$ 18.45	488%
IPRATROPIUM BROMIDE	49502-0685-03	2001	\$ 44.10	\$ 8.52	\$ 35.58	355%
IPRATROPIUM BROMIDE	49502-0685-03	2000	\$ 44.10	\$ 11.45	\$ 32.65	239%
IPRATROPIUM BROMIDE	49502-0685-03	1999	\$ 44.10	\$ 13.99	\$ 30.11	177%

TABLE 2-2**WARRICK PHARMACEUTICALS CORPORATION/ SCHERING CORPORATION/
SCHERING-PLOUGH CORPORATION**

DRUG	NDC #	YEAR	AWP	ACTUAL	SPREAD	CT % OVERCHARGE
ISOSORBIDE MONONITRATE	59930-1549-01	1999	\$ 117.40	\$ 27.60	\$ 89.80	274%
ISOSORBIDE MONONITRATE	59930-1549-01	2000-2001	\$ 117.40	\$ 27.68	\$ 89.72	273%
ALBUTEROL	59930-1560-01	1998	\$ 21.41	\$ 2.95	\$ 18.46	539%
ALBUTEROL	59930-1560-01	1999	\$ 21.41	\$ 2.79	\$ 18.62	575%
ALBUTEROL	59930-1560-01	2000	\$ 21.41	\$ 5.26	\$ 16.15	258%
CLARITIN	00085-0458-03	2003	\$ 322.99	\$ 84.70	\$ 238.29	226%
CLARITIN D	00085-1233-01	2003	\$ 363.84	\$ 55.30	\$ 308.54	228%

TABLE 2-3**ROXANE LABORATORIES, INC.**

DRUG	NDC #	YEAR	AWP	ACTUAL	SPREAD	CT % OVERCHARGE
LITHIUM CARBONATE	00054-4527-25	1994-1996	\$ 7.99	\$ 2.30	\$ 5.69	206%
IPRATROPIUM BROMIDE	00054-8402-11	1999	\$ 44.06	\$ 12.25	\$ 31.81	217%
IPRATROPIUM BROMIDE	00054-8402-11	2000	\$ 44.06	\$ 9.05	\$ 32.34	328%

TABLE 3-1**DEY, INC.**

DRUG	DOSAGE	J CODE	K CODE
ALBUTEROL SULFATE	0.083%	J7619	K0505
ALBUTEROL SULFATE	0.50%	J7625,J7618	
IPRATROPIUM BROMIDE		J7645, J7644	K0518

CROMOLYN SODIUM	Per 20 mg.	J7630, J7631	
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TABLE 3-2

**WARRICK PHARMACEUTICALS CORPORATION/ SCHERING CORPORATION/
SCHERING-PLOUGH CORPORATION**

DRUG	DOSAGE	J CODE	K CODE
ALBUTEROL SULFATE	0.083%	J7619	K0505
ALBUTEROL SULFATE	0.50%	J7625, J7618	
IPRATROPIUM BROMIDE		J7645, J7644	K0518
CROMOLYN SODIUM	Per 20 mg.	J7630, J7631	

TABLE 3-3

ROXANE LABORATORIES, INC.

DRUG	DOSAGE	J CODE	K CODE
IPRATROPIUM BROMIDE		J7645, J7644	K0518

TABLE 4-1

(1) DEY, INC.;
(2) WARRICK PHARMACEUTICALS CORPORATION/ SCHERING CORPORATION/ SCHERING-PLOUGH CORPORATION; &
(3) ROXANE LABORATORIES, INC.

Drug Name						
Albuterol Sulfate* .083%/ J Code- J7619						
	Approximate Provider Cost	Medicare Reimburse ment	Medicare Reimburse ment Based on Approximate Provider Cost of \$22.50	“Spread” Retained By Provider	CT Consumer Overcharge in Dollars	CT Consumer Percentage Overcharge
	(Column A)	(Column B)	(Column C)	(Column D)	(Column B- C)	(Column B/C)
Cost per mg.	\$0.09	\$0.47				
Cost of typical monthly usage- (250 mg per month)	\$22.50	\$117.50		\$95.00		
Medicare share 80%		\$94.00	\$18.00			
CT Consumer share 20%		\$23.50	\$4.50		\$19.00	522%
*=Multi-source drug						

Drug Name						
Ipratropium Bromide*/ J Code- J7645						
	Approximate Provider Cost	Medicare Reimburse ment	Medicare Reimburse ment Based on Approximate Provider Cost of \$59.00	“Spread” Retained By Provider	CT Consumer Overcharge in Dollars	CT Consumer Percentage Overcharge
	(Column A)	(Column B)	(Column C)	(Column D)	(Column B- C)	(Column B/C)
Cost per mg.	\$1.18	\$3.34				
Cost of typical monthly usage- (50 mg per month)	\$59.00	\$167.00		\$108.00		
Medicare share 80%		\$133.60	\$47.20			

CT Consumer share 20%		\$33.40	\$11.80		\$21.60	283%
*Multi-source drug						