

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
CIVIL ACTION NO. 03-CI-1135  
DIVISION II**

**COMMONWEALTH OF KENTUCKY  
Ex. Rel. GREGORY D. STUMBO, Attorney General**

**PLAINTIFF**

**vs.**

**WARRICK PHARMACEUTICALS CORPORATION  
SCHERING-PLOUGH CORPORATION  
SCHERING CORPORATION  
DEY, INC.**

**DEFENDANTS**

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**DEFENDANT DEY, INC.'S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Pursuant to Ky. R. Civ. P. 34, Defendant Dey, Inc. ("Dey") hereby demands that Plaintiff, Commonwealth of Kentucky, produce for inspection and copying the following documents at the offices of Greenebaum Doll & McDonald PLLC, 50 East RiverCenter Boulevard, Suite 1800, Covington, Kentucky 41012-2673, or some other place upon which Dey and the Commonwealth shall agree. Pursuant to CR 34.02(2), Plaintiff is required to serve a written response to this request, indicating whether Plaintiff will comply with each request listed below, by no later than September 20, 2004.

**DEFINITIONS**

1. The term "document" is used in its broadest sense and means and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped or produced or reproduced by any other means. The term "document" means and includes, without limitation, all appraisals, records, personal notes, e-mails, cablegrams, telexes, facsimiles, studies, calendars, day-timers, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings,

summaries, records or recordings of telephone conversations, summaries or records of personal conversations of interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, memoranda, statements, summaries, reports, journals, billing records, invoices, correspondence, letters, financial statements, balance sheets, accounting entries, audits, tax returns, loan documents, and/or all written or recorded matter of any kind whatsoever. The term "document" also means and includes every other means by which information is recorded or transmitted including, without limitation, photographs, videotapes, tape recordings, microfilms, punchcards, computer programs, printouts, computer disks, diskettes or CD-ROMs, software, all recordings made through data processing or computer techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (*e.g.*, those bearing notations or marks not found on the original document).

2. The term "person" means a natural person, a group of natural persons acting as individuals, a group of individuals acting in a collegial capacity (*e.g.*, as a committee, board of directors, agency, etc.), a corporation, a partnership, a limited partnership, a limited liability partnership, a joint venture, a limited liability corporation, a government or governmental agency and/or any other incorporated or unincorporated business, government or entity.

3. The term "concerning" means referring to, relating to, regarding, constituting, comprising, containing, setting forth, summarizing, reflecting, stating, describing, recording, noting, embodying, mentioning, studying, analyzing, evidencing, discussing, or evaluating, whether directly or indirectly.

4. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) by any means, including, but not limited to, letter, facsimile, e-mail, voicemail, memorandum, telephone, or any other type of document.

5. The phrases "documents which relate to," "documents relating to" and "entries relating to" mean documents or entries containing, constituting, showing or relating to or referring to in any way, directly or indirectly, including documents underlying, supporting, now or previously attached or appended to, or used in the preparation of, any document called for by these Interrogatories.

6. "Plaintiff" means the Commonwealth of Kentucky, including, without limitation, the office of the Kentucky Attorney General, the Kentucky Cabinet for Health Services, the Kentucky Medicaid program, the office of the Inspector General, the Department for Medicaid Services, the Office of the Ombudsman, Drug Management Review Advisory Board, Drug Technical Advisory Committee, Pharmacy and Therapeutics Advisory Committee, the Kentucky Board of Pharmacy, and any other Kentucky agency, program, and elected or appointed official, as well as agents, employees, representatives, commissions, divisions, departments, agencies, instrumentalities, administrators, or anyone else acting on behalf of any of the foregoing.

7. "HCFA" means the United States Healthcare Financing Administration, including its agents, employees, commissioners and anyone else acting on its behalf.

8. "HHS" means the United States Department of Health and Human Services, including its agents, employees, commissioners and anyone else acting on its behalf.

9. "CMS" means the federal Centers for Medicare and Medicaid Services, including its agents, employees, commissioners and anyone else acting on its behalf.

10. "Federal Agencies" means each or any of HHS, HCFA, or CMS.
11. "Medicare" means the federal Medicare Program under 42 U.S.C. §§ 1395-1395pp.
12. "Complaint" means the Amended Complaint filed in this action on or about October 14, 2003.
13. "Warrick" means Warrick Pharmaceuticals Corp. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Warrick's behalf, including attorneys.
14. "Schering-Plough" means Schering-Plough Corp. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Schering-Plough's behalf, including attorneys.
15. "Schering" means Schering Corp. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Schering's behalf, including attorneys.
16. "Dey" means Dey, Inc. and any predecessor or successor corporation and includes directors, officers, employees, agents, representatives and other persons acting on Dey's behalf, including attorneys.
17. "Defendants" means any one or more of Warrick, Schering-Plough, Schering, and Dey.
18. "Third Party Administrator" means any entity that provides administrative services to Plaintiff relating to any medical benefit provided to any Participant or Beneficiary.

19. “Benefit Consultant” means any person or entity that provides information, counsel and/or advice to Plaintiff regarding any medical benefit and/or service provided by Plaintiff to any Participant or Beneficiary.

20. “Manufacturer” means an entity that manufactures pharmaceutical products.

21. “Medicaid Rebate” means any rebate paid pursuant to 42 U.S.C. § 1396r-8 or an agreement thereunder or any supplemental rebate paid or demanded pursuant to an agreement between you and any Manufacturer.

22. “Provider” means any entity or physician who provides health care, including prescription drugs, to any Participant or Beneficiary or any person to whom Plaintiff provides reimbursement for drugs dispensed to a Patient or Beneficiary.

23. “340B Provider” means any provider covered under Section 340B of 42 U.S.C. § 256(b).

24. “Subject Drugs” means the drugs listed in the table annexed to the Complaint as Exhibit 1 and any other drug which is in any manner the subject of the claims in this action.

25. “Publisher” means any pharmaceutical price publishing service, including, without limitation, Red Book, First DataBank, Blue Book, and Medi-Span.

26. “Participant” and “Beneficiary” mean a person for whom Plaintiff provides eligible health care or health insurance through any program, including, without limitation, the Kentucky Medicaid program and Medicare Part B.

27. “PBM” means pharmacy benefit manager.

28. "AMP" or "Average Manufacturer Price" shall have the meaning set forth in 42 U.S.C. § 1396r-8(k)(1).

29. "EAC" or "Estimated Acquisition Cost" shall have the meaning ascribed to that term pursuant to 42 C.F.R. § 447.301.

30. The term "you" means the Plaintiff and/or any representative, employee, or agent of the Plaintiff who responds to, or is consulted in connection with responses to, these Interrogatories.

### GENERAL INSTRUCTIONS

A. You are requested to produce all documents designated below that are in Plaintiff's possession, custody or control, or in the possession, custody or control of Plaintiff's employees, agents, consultants, attorneys, accountants, or other representatives.

B. These Requests are continuing in nature and require further or supplemental responses and/or productions in the event Plaintiff obtains or discovers any additional, further, or different information or documents subsequent to producing documents pursuant to these Requests.

C. You are requested to produce the original and all non-identical copies, including drafts, of each document requested.

D. If any document responsive to these Requests has been lost, discarded, deleted, or destroyed, identify each such document and set forth the date, author and subject matter of the document.

E. Each page or sheet produced in response to these Requests must be marked with identification and consecutive document control numbers with the exception of bound pamphlets or books, which may be marked with a single control number. Documents

produced shall be organized and identified according to the file(s) and file system(s) in which they are kept or maintained in the ordinary course of business.

F. If, in answering any request, you make a claim that any document requested is subject to the attorney-client privilege or otherwise protected by any doctrine or privilege, please 1) answer to the extent possible; 2) provide the grounds on which you are not answering in full; and 3) describe the document with particularity sufficient to enable the adjudication of your claim that such document is privileged or otherwise protected, including the date, title, author, addressee, and general subject matter of the document.

G. If you object to any request, please 1) identify the portion of the request you claim to be objectionable; 2) state the basis for your objection; 3) identify any document withheld pursuant to such objection with particularity sufficient to enable the adjudication of your objection; and 4) answer the portion of the request to which you do not object. The present tense includes the past and future tenses.

H. The singular form of any word includes the plural, the plural includes the singular, and masculine pronouns denote correlative feminine pronouns.

I. The use of a verb in any tense shall be construed as the use of the verb in all other tenses wherever necessary to bring within the scope of these Requests all documents or information that might otherwise be construed as outside the scope of these Requests.

J. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all documents or information that might otherwise be construed as outside the scope of these Requests.

K. Unless otherwise provided herein, all words and phrases used herein shall be accorded their ordinary meanings and shall be interpreted in their common, ordinary senses.

L. These Requests are submitted for the purpose of discovery in this action and shall not be deemed to constitute a waiver of any objection(s) that may be made at trial to the introduction of evidence by any party concerning subjects covered by these Requests, or as an admission of the relevance or materiality of any matter covered by these Requests.

M. Unless otherwise stated, the relevant period for these Requests is the period from January 1, 1993, to the present. If a document concerns a time period both partially within and partially without the relevant period and is otherwise responsive to a request, you are instructed to produce that document.

### REQUESTS

1. All documents produced by You in response to requests served by any Defendants in this action.

2. All documents produced by You in *Commonwealth of Kentucky ex. rel. Gregory D. Stumbo, Attorney General v. Abbott Laboratories, Inc.*, Civil Action No. 03-CI-1134, pending in the Franklin Circuit Court, Division II.

3. All documents mentioned in or referred to in preparing Your response to Dey's First Set of Interrogatories.

4. All documents which tend to support or contradict the allegation in paragraph 1 of the Complaint that "Defendants have engaged in fraudulent, unfair, false, misleading and deceptive acts and practices in the pricing and marketing of its prescription drug products."

5. All documents which tend to support or contradict the allegation of paragraph 1 of the Complaint that Defendants' conduct has "caus[ed] the Kentucky Medicaid

program and Kentucky Medicare, Part B beneficiaries to pay grossly excessive prices” for Defendants’ drugs.

6. All documents which tend to support or contradict the allegation in paragraph 15 of the Complaint that “the Defendants were aware of the Commonwealth of Kentucky’s Medicaid drug reimbursement formulas.”

7. All documents which tend to support or contradict the allegation in paragraph 20 of the Complaint that “Defendants were aware of the Medicare program’s Part B drug reimbursement formulas.”

8. All documents which tend to support or contradict the allegation in paragraph 21 of the Complaint that "Defendants knowingly, willfully and intentionally provided false and inflated AWP and other pricing information for their drugs."

9. All documents which tend to support or contradict the allegation in paragraph 21 of the Complaint that Publishers “do not independently determine the Defendants’ drug AWP information.”

10. All documents which tend to support or contradict the allegation in paragraph 24 of the Complaint that Defendants “provided AWP and other pricing information directly to Kentucky Medicaid.”

11. All documents which reflect how Plaintiff "relied upon the AWP and other pricing information provided by the Defendants," as alleged in paragraph 25 of the Complaint.

12. All documents which tend to support or contradict the allegation in paragraph 26 of the Complaint that "Defendants were aware that Kentucky Medicaid and

Medicare, Part B beneficiaries relied upon the Defendant's AWP and other pricing information."

13. All documents which tend to support or contradict the allegation in paragraph 27 of the Complaint that "Defendants had a common law and Kentucky statutory duty to report pricing information which the Defendants knew fairly and reasonably reflected the prices in the marketplace."

14. All documents which tend to support or contradict the allegation in paragraph 28 of the Complaint that "Defendants knowingly, willfully, and intentionally concealed their drugs' true AWP and other pricing information from Kentucky Medicaid and Kentucky Medicare, Part B beneficiaries," including, but not limited to, documents sufficient to identify the dates on which such activity allegedly occurred and the employees or representatives of Dey who allegedly engaged in such activity.

15. All documents which reflect the "true AWPs" of the Subject Drugs, as alleged in paragraph 28 of the Complaint

16. All documents which tend to support or contradict the allegation in paragraph 29 of the Complaint that "Defendants' false and inflated reporting of AWP or other drug pricing information greatly exceeded the actual prices at which the Defendants and/or other sellers sold their drugs to Kentucky Medicaid providers."

17. All documents which tend to support or contradict the allegation in paragraph 30 of the Complaint that "the Defendants' reported AWP bears no relation to any price, much less an average wholesale price."

18. All documents which tend to support or contradict the allegation in paragraph 32 of the Complaint that "Defendants knowingly, willfully, and intentionally created

a 'spread' on their drugs, and marketed the 'spread' on their drugs with the intent of inducing Kentucky Medicaid providers to purchase and prescribe their drugs rather than competitors' drugs."

19. All documents which tend to support or contradict the allegation in paragraph 32 of the Complaint that the alleged creation and marketing of the "spread" increased "the market share and profits of the Defendants," including, but not limited to, documents sufficient to identify the dates on which such activity allegedly occurred and the employees or representatives of Dey who allegedly engaged in such activity.

20. All documents which tend to support or contradict the allegation in paragraph 33 of the Complaint that "the Defendants manipulated and controlled the size of the 'spread' on their drugs by increasing their reported AWP and other pricing information, while decreasing their actual sale price to wholesalers and providers over time."

21. All documents which tend to support or contradict the allegation in paragraph 34 of the Complaint that "Defendants used free goods, educational grants and other incentives to induce providers to purchase their drugs...resulting in increased profits for providers, as well as market share and profits of the Defendants."

22. All documents which tend to support or contradict the allegation in paragraph 37 of the Complaint that Defendants' alleged actions "resulted in the Commonwealth of Kentucky paying millions of dollars in excess Medicaid payments, while at the same time enriching the Defendants with excessive, unjust and illegal profits."

23. All documents which tend to support or contradict the allegation in paragraph 38 of the Complaint that Defendants' alleged actions "resulted in Kentucky's Medicare, Part B beneficiaries . . . paying excessive co-payments for covered drugs."

24. All documents which tend to support or contradict the allegation in paragraph 39 of the Complaint that Defendants engaged in "creating and reporting false and inflated AWP pricing information for their drugs."

25. All documents which tend to support or contradict the allegation in paragraph 39 of the Complaint that Defendants' alleged actions "in some cases have caused the 20% co-payment paid by Kentucky Medicare, Part B beneficiaries to exceed the total actual cost of the drug to the provider."

26. All documents which tend to support or contradict the allegation in paragraph 49 of the Complaint that Defendants engaged "in a scheme to falsify the true AWP of their drugs."

27. All documents which tend to support or contradict the allegation in paragraph 49 of the Complaint that Defendant "knowingly and willfully report[ed] false, misleading and inflated AWP pricing information on its drug products to national reporting services, while at the same time concealing actual AWP pricing information."

28. All documents which tend to support or contradict the allegation of paragraph 55 of the Complaint that "[t]he reporting services... published the Defendants' AWP information to substantial numbers of persons, including, but not limited to, the Kentucky Medicaid program, in connection with promotion of the sale of or to increase the consumption of Defendants' prescription drugs."

29. All documents which tend to support or contradict the allegation in paragraph 76 of the Complaint that Defendants "represented they were providing true AWP or other pricing information concerning their drugs to national pharmaceutical reporting services

with knowledge or reasonable expectation that the false representations would be relied upon by (a) the Kentucky Medicaid program and, (b) Medicare, Part B beneficiaries."

30. All documents which tend to support or contradict the allegation in paragraph 79 of the Complaint that "Plaintiff and Kentucky Medicare, Part B beneficiaries reasonably relied upon the false representations as set forth in this complaint and were induced by those representations to reimburse Medicaid providers at a cost substantially above the average wholesale price paid for the medication, and pay higher co-payments, respectively."

31. All documents concerning any representation made by Dey to You.

32. All documents concerning any external or internal audit, review, report, study, statistical sampling or analysis performed by or for You, concerning Medicaid reimbursement for prescription drugs or for professional services associated with the dispensing or administration of prescription drugs, including:

(1) The audit, review, report, study, sampling or analysis, and all drafts thereof;

(2) Contracts and correspondence with external parties concerning any such audit, review, report, study, sampling or analysis;

(3) Internal memoranda related to the audit, review, report, study, sampling or analysis; and

(4) Documents sufficient to identify all persons participating in the creation of or having access to any assessments, studies, analyses, reviews or audits regarding the Kentucky Medicaid program.

33. All documents received from or provided to a Federal Agency, the General Accounting Office or Congress, concerning AWP, Medicaid or Medicare reimbursement for prescription drugs, or Medicaid or Medicare reimbursement for professional services associated with the dispensing or administration of prescription drugs.

34. All documents concerning the meaning of AWP, AMP, MAC, EAC, FUL, and Best Price.
35. All documents discussing the AWP, AMP, MAC, EAC, FUL, Best Price, Provider acquisition cost, or any other drug pricing information for any drug, including, but not limited to, the Subject Drugs.
36. All documents received from any source, including but not limited to Publishers, Manufacturers, the National Association of Medicaid Fraud Control Units, the United States Department of Justice, agencies of other State governments, Federal Agencies, Providers or 340B Providers, concerning or referring to AWP or pricing for the Subject Drugs.
37. All documents concerning any requests by You for information concerning the pricing of prescription drugs.
38. All documents reflecting the establishment of a MAC for any drug.
39. All documents that reflect or concern the relationship between AWP and the prices at which Providers purchase drugs.
40. All documents that concern the decision to use or not use AWP, AMP, MAC, EAC, FUL, and/or Best Price in connection with the reimbursement of Providers under Medicare or any State Medicaid program.
41. All documents concerning Plaintiff's decision to use reported AWP data as a basis for reimbursing Providers for prescription drugs dispensed to Participants and Beneficiaries pursuant to any program.
42. All documents that concern the decision to use a discount off AWP in determining Medicare or Medicaid reimbursement.

43. All documents that concern the method by which Kentucky Medicaid reimburses 340B Providers for dispensing, providing, supplying or administering drugs to Medicaid beneficiaries, and reflecting how such reimbursements are determined, including, but not limited to, all documents discussing why Kentucky Medicaid reimburses 340B Providers in a manner different from other Providers.

44. All documents reflecting how You determined and calculated reimbursement amounts for the Subject Drugs, including, but not limited to, guidelines, manuals, instructions, computer systems, programs and databases.

45. All documents which reflect the alleged losses, damages, or overpayments Plaintiff seeks to recover from Dey in this action and the methodology used to determine those alleged losses, damages or overpayments.

46. All documents reflecting reimbursement paid to Providers by Kentucky Medicaid for Subject Drugs, including both drug ingredient reimbursement based on AWP and reimbursement for professional services associated with dispensing or administering Subject Drugs.

47. All documents reflecting the units of Subject Drugs dispensed by Providers to Kentucky Medicaid beneficiaries who received reimbursement.

48. Documents sufficient to identify all persons employed by or for You who participated in the consideration, determination, calculation or setting of reimbursement amounts or rates for prescription drugs during the relevant period, including all directors of Kentucky Medicaid during the relevant period, as well as the identity of all employees of Kentucky Medicaid and/or any other Kentucky agency, board or commission involved or in

any way responsible for the administration or oversight of the Kentucky Medicaid program from January 1, 1993 to the present.

49. All documents concerning legal or legislative hearings in which the term AWP was discussed.

50. All documents concerning legal or legislative hearings concerning Medicaid or Medicare reimbursement for prescription drugs or for professional services associated with dispensing or administering prescription drugs.

51. All documents concerning or constituting contracts, memoranda of understanding, or agreements concerning the processing of Kentucky reimbursement claims for the Subject Drugs, including but not limited to contracts or arrangements concerning data processing and third party administration of claims.

52. All documents concerning the tracking of Kentucky drug reimbursement claims for the Subject Drugs.

53. All fee schedules for the Subject Drugs compiled by You or on your behalf.

54. All documents concerning statutes, rules, regulations, policies, guidelines and interpretations and opinions concerning reimbursement for prescription drugs by Medicaid and by all other health benefits programs of the State.

55. All documents relating to the payment of any rebates or supplemental rebates for the Subject Drugs, including but not limited to the following:

(1) All communications between You and the federal government relating to utilization and "per-unit" rebate data;

(2) All communications between You and the Defendant concerning the computation or payment of rebates or supplemental rebates for the Subject Drugs;

(3) All memoranda, analyses or other documents in Your possession concerning the payment of rebates or supplemental rebates for the Subject Drugs;

(4) Documents exchanged by and between You and any Manufacturer, including Defendants, concerning the payment of rebates or supplemental rebates under the federal Medicaid program;

(5) Documents reflecting or concerning Your request made to any Manufacturer for the payment of supplemental, additional, or increased rebates, including documents which reflect a demand for additional rebates as a condition to continued reimbursement of drugs manufactured by any Manufacturer, including Defendants; and

(6) Invoices for the payment of any rebates or supplemental rebates sent to Defendants for the Subject Drugs and all documents concerning payment of such invoices.

56. All documents reflecting or constituting communications between You and any Publisher.

57. All documents either provided to You by a Publisher or provided by a Publisher to you.

58. All documents consisting of or concerning the sources of AWP's used or not used by Kentucky Medicaid.

59. All documents that reflect any interaction between You and any Providers concerning the Subject Drugs, including, but not limited to, the following:

(1) Documents concerning the claims submitted to You by Providers concerning the Subject Drugs

(2) Documents that show the amounts paid by You to each Provider on account of each claim, including all documents reflecting the manner in which reimbursement amounts were calculated by Plaintiff and whether such calculations were based on FUL, EAC, MAC, usual and customary charge, or any other methodology.;

(3) Documents that reflect the name and address of each Provider eligible to submit claims to the Agencies concerning the Subject Drugs during the relevant time period;

(4) All documents sufficient to establish that Providers who actually received any alleged "overpayments" from You were eligible to receive those payments;

(5) All documents which reflect the drugs eligible for reimbursement; and/or

(6) Documents concerning any action, administrative or otherwise, to recover the alleged "overpayments" of "excessive amounts" from the Providers who actually received the alleged "overpaid" amounts or "excessive amounts" for drug reimbursement.

60. All documents reflecting a communication with Dey, including all documents received from or sent to Dey by You, regarding the Subject Drugs or the term AWP.

61. All documents reflecting whether You ever questioned or complained to any pharmaceutical Manufacturer that the Manufacturer had failed to report prices for its products accurately, including, but not limited to, written Documentation of the complaint or question, as well as all documents which refer or relate to decisions made by You whether to question or complain that a pharmaceutical Manufacturer had failed to report prices for its products accurately, including, but not limited to, documents which discuss the need, or absence of need, for such decision.

62. All documents sent or received by You concerning prescription drug reimbursement methodology under Kentucky Medicaid or Medicare or commenting upon the methodology used by You for prescription drug reimbursement, including, but not limited to, the following:

(1) All articles, seminar papers and other publications that address and/or deal with any of the following subjects: Kentucky Medicaid, pricing, costs, Medicare, reimbursement in state drug programs and/or rebates that You have in Your files and to which agents, servants, employees, and officers of the State would have had access;

(2) All documents concerning any change (whether proposed or adopted) to the reimbursement amounts or rates applicable to prescription drugs under any program, including documents effecting the reason for such change;

(3) All documents concerning comments received during a "notice and comment" period, or at any other time, regarding how Kentucky Medicaid reimburses for prescription drugs or for professional services associated with the dispensing or administration of prescription drugs.

(4) All documents concerning any alternative reimbursement formula or formulas for prescription drugs considered, reviewed or studied by You.

63. All documents concerning any direct purchasing agreements or other purchasing programs concerning any prescription drugs, including, but not limited to, the following:

(1) All documents relating to any contracts between You and a PBM, including, but not limited to, all "Request(s) for Proposal" or similar documents issued by You regarding any prescription drug program services and/or any PBM services, and all responses to those Request(s) for Proposal;

(2) All communications exchanged by and between You and any Provider, any Benefit Consultant, or any Third Party Administrator regarding reimbursement for prescription drugs under any program administered by You;

(3) All work papers, contracts and other documents relating to any intermediary involved in the Kentucky Medicaid program concerning the Subject Drugs or the subject matter of the Complaint;

(4) All work papers, contracts and other documents relating to any negotiations or persons who negotiated on behalf of You with any Manufacturer concerning prices for or reimbursement of any prescription drugs;

(5) All documents concerning any negotiations by or on behalf of You with any Manufacturer concerning reimbursement of prescription drugs;

(6) Documents constituting or concerning prescription drug vendor contracts, other contracts, memoranda of understanding, and/or agreements between You and pharmacies or other Providers relating to the provision of or payment for the Subject Drugs; and

(7) Documents constituting or concerning vendor contracts relating to the processing of Kentucky Medicaid drug reimbursement claims including but not limited to contracts or arrangements concerning data processing and third party administration of claims

64. All documents concerning the market shares in Kentucky of each and every Manufacturer of each of the Subject Drugs.

65. All documents concerning cost control measures regarding prescription drugs considered in connection with the Kentucky Medicaid program, including all agendas, minutes, or notes of meetings at which cost control measures regarding prescription drugs for the Kentucky Medicaid program were discussed, as well as all data, reports, testimony,

analyses, or audits that formed the basis for any decision You made to adopt or reject any cost control measures for the Kentucky Medicaid program.

66. All documents concerning any cooperative efforts with any other state, including, but not limited to, Mississippi, Missouri, Louisiana, New Mexico, Ohio, Pennsylvania, South Carolina and West Virginia, to reduce the cost of prescription drugs in Kentucky.

67. All documents concerning any application for federal funds in connection with the Kentucky Medicaid program made by You, including all reports made by You to HCFA, HHS, CMS, or any other federal institution, agency, department, or office, or to the Governor of Kentucky, the Legislative Research Commission, or any other Kentucky agency, board or commission, regarding prescription drug reimbursement under the Kentucky Medicaid program.

68. All documents concerning the operation of the Kentucky Medicaid program from January 1, 1993 to present, including, but not limited to, the following:

- (1) Any operating plan or related documents concerning the Kentucky Medicaid program, including, but not limited to, all Kentucky Medicaid program instructions issued by You from January 1, 1993 to the present;
- (2) All audits conducted of the records of the Kentucky Medicaid program from January 1, 1995 to the present relating to pharmaceutical reimbursement;
- (3) All audits conducted of pharmacies or other Providers of the Subject Drugs performed by You or on Your behalf;
- (4) Documents sufficient to show how much money You reimbursed to pharmacies or other Providers for each of the Subject Drugs on a quarterly basis from January 1, 1995 to the present;
- (5) Documents, databases and/or computer systems or programs used by Kentucky Medicaid and/or any other Kentucky agency to calculate, monitor, process and/or pay reimbursement claims for the Subject Drugs including, but not limited to, documents reflecting the identity of all employees having access to such documents, databases, systems or programs;

(6) Written "Assurances" or similar documents filed with or submitted to the federal government concerning the Kentucky Medicaid program from January 1, 1993 to the present;

(7) All documents concerning Kentucky's "state plan for medical assistance," adopted pursuant to 42 U.S.C. § 1396(a), including any documents which concern proposed or adopted changes or amendments to such plan and any documents sufficient to identify all persons who participated in the creation or adoption of any Kentucky "state plan for medical assistance," or any proposed or adopted amendments thereto; and

(8) All documents, including, but not limited to, communications, concerning any consultations between You and any "medical care advisory committee" (42 C.F.R. § 431.12(b)), in which AWP, AMP, MAC, EAC, Best Price, or other drug pricing information is mentioned, including documents sufficient to identify all persons who participated in or communicated with any Kentucky "medical care advisory committee."

69. All documents concerning any lobbying efforts by pharmacies, pharmacists, other Providers, professional or trade groups (including the Kentucky Pharmacists Association), patients' rights groups, law firm, lobbying firm, or any other non-government organization, relating to Medicaid or Medicare reimbursement of prescription drugs or reimbursement for professional services associated with the dispensing or administration of prescription drugs.

70. All documents concerning communications with a pharmacy, a pharmacist, any other Provider, a professional or trade group (including the Kentucky Pharmacists Association), a patients' rights group, law firm, lobbying firm, or any other or any other non-government organization, related to Medicaid or Medicare reimbursement of prescription drugs or reimbursement for professional services associated with the dispensing or administration of prescription drugs.

71. All documents concerning communications with the National Association of Medicaid Fraud Control Units ("NAMFCU") concerning Medicaid reimbursement for prescription drugs or AWP, including but not limited to documents given to or received from NAMFCU.

72. All documents concerning communications with the United States Department of Justice (“DOJ”) concerning Medicaid reimbursement for prescription drugs or AWP, including but not limited to documents given to or received from the DOJ.

73. All documents concerning the revised AWP prices provided by DOJ and NAMFCU to First DataBank in 2000, including but not limited to Your consideration of using those revised AWPs.

74. All documents concerning Medicaid reimbursement for prescription drugs by States or Commonwealths other than Kentucky.

75. Organizational charts for all agencies of the Commonwealth responsible for Medicaid prescription drug reimbursement or for reimbursement of professional services associated with the dispensing and administration of prescription drugs.

76. Documents concerning, relating to, or describing any document retention or destruction policy in effect for Plaintiff and all documents relating to such policy, including any changes to such policy.

77. Documents sufficient to identify the director or directors of the Kentucky Cabinet for Health Services (“KCHS”) during the relevant period.

78. Rules, regulations, policies, guidelines and interpretations and opinions concerning the health benefit programs sponsored or maintained by You which are at issue in this action.

79. All documents You have obtained from other drug manufacturers relating to the Subject Drugs, the issues in this action, or the Defendants.

80. All documents relating to reimbursement formulas, matrices, guidelines, and/or other policies relating to the sale of the Subject Drugs.

81. All documents reflecting communications between Defendants and/or any other Kentucky agency, office, official or entity concerning the Medicaid reimbursement system.

82. All documents reflecting, referring to, describing or consisting of communications between You and any "Healthcare Management Organization" (also known as an "HMO") or any PBM which pertains to the pharmaceutical reimbursement of the Subject Drugs.

83. All documents which reflect a concern by any person that reimbursement formulae based on AWP, or which refer to AWP, may not accurately reflect EAC or the price paid by a Provider for drugs.

84. All documents which concern the meaning of EAC, including documents reflecting a discussion of how to design reimbursement formulae which will provide a reimbursement amount which accurately reflects EAC.

85. All documents which reflect the establishment of a MAC for any of the Subject Drugs.

86. All documents which concern the definition of AWP or the relationship between reported AWPs and the prevailing prices at which drugs are available to Providers.

87. All documents comparing reported AWPs and the prevailing prices at which drugs are available to Providers.

88. All documents concerning the federal Medicare program or the Medicaid program written, edited, compiled, or otherwise published by HHS, AHCA or CMS.

89. All documents concerning or referring to pricing information for the Subject Drugs received from any source.

90. All applications and other written submissions by Defendants to you.
91. All documents prepared, sent or received by You, including but not limited to the KCHS or the Office of the Attorney General or any unit thereof, that refer or relate to Defendants or which constitute a communication between You and Defendants.
92. All documents which explain the consideration, if any, given by You to utilization of a FUL or MAC for any of the Subject Drugs.
93. All documents which reflect an awareness or use by any of Your employees of MAC or FUL in use in any other state or commonwealth or by the federal government for any of the Subject Drugs.
94. All documents which reflect any awareness or use by any of Your employees of the AMP for any of the Subject Drugs.
95. All documents which constitute or refer to reports of AMP by any of the Defendants or by HHS, AHCA, or CMS to You.
96. All documents concerning any audit, review, study or analysis performed by You, OAG, HCFA, HHS, or CMS concerning the reimbursement amounts or rates applicable to the Subject Drugs.
97. All documents relating to any audit or study of dispensing fees regarding the Subject Drugs.
98. All documents received by You from, or sent by You to, the Office of the Inspector General of HHS and the Governmental Accounting Office relating to studies on pharmaceutical reimbursement.

99. All documents concerning any audit, review, study or analysis of the utilization rate of the Subject Drugs as conformed to the reimbursement amounts or rates applicable to the Subject Drugs.

100. All documents concerning the reimbursement of prescription drugs exchanged by and between You and any of HHS, HCFA, CMS, or any office of any state or commonwealth analogous to KCHS.

101. All documents concerning the reimbursement of prescription drugs exchanged by and between KCHS and any other Kentucky health care agency, department, legislator, legislative body or office.

102. All documents, including pricing compendia, authored or published by the Publishers, or any one of them.

103. All documents reflecting that AMP can be derived from "per-unit" rebate data.

104. All documents describing how You reimburse Providers for dispensing the Subject Drugs.

105. All documents reflecting reimbursement of providers for dispensing Subject Drugs to Medicaid Beneficiaries.

106. All documents concerning the Plaintiff's purchase of, or reimbursement for purchases of, the Subject Drugs.

107. All documents concerning the maximum allowable cost ("MAC") established by Plaintiff for the Subject Drugs, including all documents concerning how Plaintiff established the MACs for the Subject Drugs.

108. All documents concerning the “usual and customary charge,” as identified, established, or discovered by Plaintiff, for the Subject Drugs.

109. All documents evidencing, reflecting, or referring to reliance by Plaintiff or Medicare on AWP's allegedly reported by Defendants.

110. Documents sufficient to identify all persons employed by Plaintiff or otherwise acting on Plaintiff's behalf who were involved in, or in any way responsible for, processing or paying on claims for reimbursement for prescription drugs dispensed by Providers.

111. All documents received by Plaintiff, from any source, that previously were produced by any of the Defendants in connection with any subpoena, civil action, government investigation, or other, similar proceeding.

112. All documents Plaintiff has obtained from Manufacturers concerning the Subject Drugs, the issues in this action, or the Defendants.

113. All documents concerning the meaning of EAC, including documents reflecting considerations or discussions about how to design reimbursement formulae that provide reimbursement amounts that accurately reflects EAC.

114. All documents relating to Medicaid Rebates for the Subject Drugs, including, without limitation: (i) all communications between Plaintiff and the federal government relating to utilization and “per-unit” rebate data; (ii) all communications between Plaintiff and any of the Defendants concerning Medicaid rebates; (iii) all memoranda, analyses or other documents in Plaintiff's possession concerning Medicaid Rebates for the Subject Drugs; and (iv) all documents concerning Medicaid rebates paid by Dey for the Subject Drugs, including, without limitation, documents sufficient to identify the amount of such rebates and the number of units of each Subject Drug for which Dey paid a rebate.

115. All documents concerning any request made by Plaintiff to any Manufacturer for the payment of supplemental, additional, or increased rebates, including documents reflecting a demand for additional rebates as a condition to continued reimbursement of drugs manufactured by any Manufacturer.

116. All invoices for Medicaid Rebates sent to Defendants for the Subject Drugs and all documents concerning payment of such invoices.

117. All documents comparing reported AWP to prevailing prices at which drugs are available to Providers.

118. All documents concerning the determination, calculation, and setting of reimbursement amounts for the Subject Drugs.

119. All documents concerning any questions or complaints posed or made by Plaintiff to any Manufacturer concerning the Manufacturer's alleged failure to accurately report prices for its products.

120. All documents concerning whether Plaintiff or Medicare adopted any reimbursement formula based on AWP in order to subsidize medical services, procedures, or equipment by means of over-reimbursement for pharmaceutical products, including all documents in which references to both AWP-based reimbursement formulae and such subsidization appear.

121. All documents concerning consideration given by Plaintiff to utilization of a FUL, MAC, or the usual and customary charge for any of the Subject Drugs.

122. All documents reflecting any awareness of, or use by, Plaintiff of AMPs for the Subject Drugs.

123. All documents Plaintiff provided to or received from Myers and Stauffer LC and the University of Kentucky College of Pharmacy Special Unit concerning costs, reimbursement, or dispensing fees associated with prescription drugs.

124. All documents concerning any effort or plan considered or undertaken by Plaintiff to reduce or limit expenditures by Kentucky Medicaid for prescription drugs.

125. All documents, including, without limitation, communications, exchanged by and between Plaintiff and any Third Party Administrator concerning the reimbursement amounts or rates applicable to prescription drugs under any program.

126. All documents, including, without limitation, communications, exchanged by and between Plaintiff and any Benefit Consultant concerning the reimbursement amounts or rates applicable to prescription drugs under any program.

127. All documents, including, without limitation, communications, exchanged by and between Plaintiff and any PBM concerning reimbursement of prescription drugs.

128. All data, reports, testimony, analyses, or audits that formed the basis of Plaintiff's or Medicare's decision to use published AWP data as a basis for reimbursement of Providers for the Subject Drugs dispensed to Participants and Beneficiaries.

129. All data, reports, testimony, analyses, or audits that formed the basis for Plaintiff's or Medicare's decision to discount AWP by a certain percentage in calculating reimbursement amounts or rates for the Subject Drugs.

130. All documents concerning any direct pricing agreements or other purchasing programs concerning any prescription drugs.

131. All documents concerning cost control measures regarding prescription drugs considered in connection with any program.

132. All documents concerning any application by Plaintiff for federal funds in connection with any program involving provision of prescription drugs to Participants or Beneficiaries.

133. All communications, including, without limitation, electronic mail messages, notes, minutes of meetings, memoranda or other such documents, between and among Plaintiff's employees concerning calculation or determination of reimbursement rates for the Subject Drugs or the processing of payments made on claims for reimbursement under Medicaid.

134. To the extent not produced in response to any of the forgoing requests, all documents concerning AWP, AMP, MAC, EAC, or any other drug pricing information for the Subject Drugs.

135. All price lists, fee schedules or other pricing information concerning the Subject Drugs.

136. All documents concerning Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care"), including, without limitation, communications with or about Ven-A-Care, notes, memoranda, or summaries of presentations, including any presentations to the National Association of Medicaid Fraud Control Units.

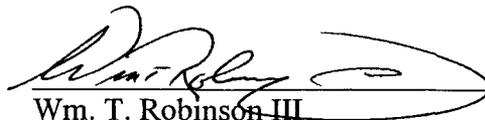
137. All documents, including, without limitation, reports, summaries, or memoranda, received by Plaintiff from any federal or state agency, department, institution, or office concerning prescription drug pricing or reimbursement.

138. Organizational charts or similar documents that reflect the identity of employees or representatives of the Plaintiff who are or were involved in or responsible for administration or oversight of the Kentucky Medicaid program.

139. All documents concerning the difference between the AWP and acquisition cost of any drug, including, without limitation, reports or memoranda issued by any government entity or agency, publications by Plaintiff or any other State, correspondence sent or addressed to Plaintiff's employees or agents, legislative materials, newspaper and magazine articles, television and radio broadcasts, and transcripts of Congressional testimony.

Dated: August 13, 2004

Respectfully submitted,

  
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#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant Dey, Inc.'s First Set of Requests for Production of Documents to Plaintiff was served this 13<sup>th</sup> day of August, 2004 by regular U.S. Mail, postage prepaid, upon the individuals listed below:

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