

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: 14. Other Civil

State of Minnesota, by its Attorney
General, Mike Hatch,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

Pharmacia Corporation, a Delaware
corporation,

Defendant.

Plaintiff State of Minnesota, by its Attorney General, Mike Hatch, for its Complaint against Defendant Pharmacia Corporation, alleges that:

INTRODUCTION

1. Defendant Pharmacia Corporation ("Defendant") has defrauded elderly and disabled Minnesota Medicare beneficiaries and the State of Minnesota's Medicaid and other state prescription drug programs in the pricing of its prescription drugs, including those identified in Exhibit A. The Defendant's fraudulent practices have caused Minnesota Medicare beneficiaries and the Minnesota Medicaid and other state prescription drug programs to pay grossly excessive prices for various of the Defendant's prescription drugs. Plaintiff State of Minnesota, by its Attorney General, Mike Hatch ("the State"), brings this action against the Defendant to enjoin it from continuing to perpetrate its drug pricing fraud, to collect damages and to obtain other equitable relief for elderly and disabled Minnesota Medicare beneficiaries and the Minnesota Medicaid and other state prescription drug programs caused by the Defendant's fraud, and to impose civil penalties against the Defendant for its fraudulent practices.

PARTIES

2. Minnesota Attorney General Mike Hatch is authorized under Chapter 8 of the Minnesota Statutes and Minnesota common law, including the Attorney General's *parens patriae* authority, to bring this action on behalf of the State and its citizens to enforce Minnesota's laws including, but not limited to, its consumer protection, Medicaid fraud and common law fraud laws.

3. Defendant is a Delaware corporation with its principal place of business in Peapack, New Jersey. At all times material hereto, the Defendant transacted business in the State of Minnesota by, including but not limited to, marketing, selling and distributing pharmaceutical products to purchasers in the State of Minnesota.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the State's claims under Minn. Stat. §§ 8.01, 8.31, 8.32, 256B.12, 256B.121, 325F.67, 325F.69, 325F.70, 325F.71 and the *parens patriae* and common law authority of the Attorney General.

5. Venue is proper in Hennepin County under Minn. Stat. § 542.09 because the cause of action arose, in part, in Hennepin County.

FACTUAL BACKGROUND

MINNESOTA MEDICAID PRESCRIPTION DRUG PROGRAMS

6. The State of Minnesota Medicaid program and other state prescription drug programs ("the Medicaid program") pay for medical benefits, including prescription drugs, for certain low income and disabled Minnesota citizens. The Medicaid program is administered by the Minnesota Department of Human Services. The Medicaid program reimburses physicians

and pharmacists for certain drugs prescribed for, and administered to, Medicaid recipients pursuant to statutory formulas.

MEDICAID PRESCRIPTION DRUG PROGRAM REIMBURSEMENT FORMULAS

7. Minn. Stat. § 256B.0625, subd. 13 establishes the formulas used by the Medicaid program to reimburse physicians and pharmacies for prescription drugs administered to Medicaid recipients. Based on this statute, the Medicaid program generally pays pharmacists the average wholesale price (“AWP”) of the drug minus nine percent, plus a set dispensing fee. Also based on this statute, for certain drugs administered in a physician’s office, the Medicaid program generally pays physicians the AWP of the drug minus five percent. Many state Medicaid programs use comparable formulas based on AWP. At all times relevant to this action, the Defendant was aware of Minnesota’s statutory reimbursement formulas.

THE DEFENDANT’S INFLATED AWPs

8. The Defendant provided AWPs and other pricing information for its drugs using various price reporting services, including First Data Bank (*f/n/a* the *Blue Book*), Medical Economics Co., Inc. (the *Red Book*) and Medispan. These price reporting services do not independently determine the Defendant’s AWPs. Rather, the Defendant provided AWPs, or other pricing information from which the AWPs are derived, to the price reporting services, which in turn published the Defendant’s prices. The Medicaid program purchases the Defendant’s AWPs and other pricing information from these price reporting services.

9. The Defendant also provided AWPs and other pricing information directly to the Medicaid program.

10. At all material times hereto, the Defendant was aware that the Medicaid program uses the Defendant’s AWPs and other pricing information, as provided to various price reporting

services, to determine the amounts it reimburses to physicians for prescription drugs. The Defendant knowingly and intentionally inflated the AWP for its drugs, including those identified in Exhibit A, sold to Minnesota physicians. The Defendant knew that its inflation of the AWP for its drugs would cause the Medicaid program to pay physicians excessive amounts for these drugs. The Defendant concealed its actual wholesale prices from the Medicaid program. The Defendant's inflated AWP greatly exceeded the actual prices at which the Defendant sold its drugs to physicians and wholesalers. Thus, the Defendant's "average wholesale price" bears no relation to any price, much less a wholesale price. The Defendant refers to the difference between the AWP and the actual price of a drug as the "spread" or, alternatively, "return to practice" or "return on investment."

THE DEFENDANT'S MARKETING OF THE "SPREAD"

11. The Defendant 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. The Defendant induced physicians to purchase its drugs, rather than competitors' drugs, by persuading them that the wider "spread" on the Defendant's drugs would allow the physicians to receive more money, and make more of a profit, at the expense of the Medicaid program and Medicare beneficiaries.

12. The Defendant manipulated and controlled the size of the "spread" on its drugs by both increasing its reported AWP and decreasing its actual prices to physicians. For example, for Adriamycin, one of its drugs used in treating breast cancer and other types of cancers, the Defendant reported an AWP of \$241.36 in April 2000 when it was selling the drug wholesale for as low as \$33.43, creating a "spread" of \$207.92. In 1997, the Defendant reported an AWP for this drug of \$946.94 at the same time it sold the drug to physicians for as low as \$168.00,

creating a "spread" of \$778.94. The Defendant represented to physicians who administer the drug to cancer patients that the higher AWP and "spreads" would result in increased profits, stating:

Some of the drugs on the multi-source list offer you savings of over 75% below list price of the drug. For a drug like Adriamycin, the reduced pricing offers [the oncology group] a reimbursement of over \$8,000,000 profit when reimbursed at AWP The spread from acquisition cost to reimbursement on the multisource products offered in the contract give [sic] [the oncology group] a wide margin for profit.

Similarly, the Defendant also reported an AWP of \$28.38 for its drug, Toposar, used to treat lung and testicular cancer, when at the same time it sold the drug to physicians for as low as \$1.70.

13. Tables 1 and 2 attached to this Complaint provide additional examples of the Defendant's inflated AWP and the impact of those AWP on the "spread."

14. At the same time the Defendant was lowering its chemotherapy drug prices to medical providers, it was inflating its AWP used by the Medicaid program and Medicare beneficiaries, creating increasingly dramatic "spreads" to sell more of its drugs.

15. In addition to manipulating its AWP and other pricing information, the Defendant used free goods, "educational grants" and other incentives to induce physicians to purchase its drugs, all of which lowered the actual prices of the drugs and created even wider "spreads."

MEDICARE PRESCRIPTION DRUG PROGRAM

16. The federal Medicare program pays for a portion of the cost of a limited number of prescription drugs. These covered drugs are administered by a physician or used with certain medical equipment. The Medicare program is administered by the United States Department of Health and Human Services ("HHS").

17. The Medicare program uses the AWP's provided by the Defendant to calculate the allowable amount that it will pay for a covered prescription. Generally, the Medicare program uses the manufacturer's reported AWP or an average of the reported AWP's for a covered drug and subtracts five percent, arriving at an adjusted cost. The Medicare program then pays 80 percent of this adjusted cost. Under the Medicare program, the Medicare beneficiary must pay a co-payment equal to 20 percent of the adjusted cost. If the Medicare beneficiary is also a Medicaid recipient, the Medicaid program pays this 20 percent co-payment.

18. Because of the Defendant's fraudulent inflation of the AWP's of its drugs and concealment of the actual prices of its drugs, including those identified in Exhibit A, the co-payments paid by individual Medicare beneficiaries are grossly excessive. In fact, in some instances, the 20 percent co-payment amount alone actually exceeds the total actual cost of the drug to the physician. For example, in 1997, Medicare beneficiaries suffering from cancer, including leukemia and Hodgkin's disease, paid a co-payment of approximately \$70 for vincasar, one of the Defendant's chemotherapy drugs. At the same time, the Defendant sold the drug to physicians for as low as \$4.15. The Defendant was well aware of this consequence of its fraudulent AWP pricing practice and, in fact, used it to induce physicians to purchase its drugs.

INJURIES TO THE MEDICAID PROGRAM AND MEDICARE BENEFICIARIES

19. Since 1996, the cost of prescription drugs to the Minnesota Medicaid program has skyrocketed approximately 300 percent. The cost of the Defendant's fraud has also been shouldered by Minnesota consumers, including ill, dying and elderly Minnesotans. The Medicaid program and Medicare beneficiaries have paid grossly excessive amounts for the Defendant's prescription drugs because of the Defendant's fraudulent pricing practices.

CLAIMS

COUNT ONE - CONSUMER FRAUD MINN. STAT. § 325F.69

20. The State realleges all of the above paragraphs.

21. Section 325F.69, subd. 1 of the Minnesota Consumer Fraud Act prohibits:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby

22. The Defendant violated section 325F.69. The Defendant made misrepresentations and misleading statements and engaged in fraud and deceptive practices regarding the AWP's of its drugs with the intent that others rely thereon, including knowing that the Medicare and Medicaid programs are required by statute to use AWP, so the Defendant could market the "spread" on its drugs and increase its market share.

23. As a direct result of the Defendant's violations of section 325F.69, the Medicaid program and Minnesota Medicare beneficiaries have been injured by having to pay grossly excessive amounts for the Defendant's prescription drugs.

COUNT TWO - FALSE ADVERTISING MINN. STAT. § 325F.67

24. The State realleges all of the above paragraphs.

25. Minn. Stat. § 325F.67 provides that:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise . . . or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto . . . makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter,

or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise . . . or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

26. The Defendant violated section 325F.67. With the intent to sell, dispose of or increase the consumption of its drugs, it directly or indirectly caused First Data Bank (*f/n/a Blue Book*), Medical Economics Co., Inc. (*the Red Book*) and/or Medispan to publish in Minnesota in a publication or other manner the AWP's of its drugs which were untrue, deceptive and misleading.

27. As a direct result of the Defendant's false advertising in violation of section 325F.67, the Medicaid program and Minnesota Medicare beneficiaries have been injured by having to pay grossly excessive amounts for the Defendant's prescription drugs.

**COUNT THREE - FRAUD ON SENIOR CITIZENS
AND HANDICAPPED PERSONS
MINN. STAT. § 325F.71**

28. The State realleges all of the above paragraphs.

29. Minn. Stat. § 325F.71 provides for additional penalties for fraudulent or deceptive conduct aimed at senior citizens, stating:

[A] person who engages in any conduct prohibited by . . . [Minnesota deceptive trade, consumer fraud, or false advertising] statutes, and whose conduct is perpetrated against one or more senior citizens or handicapped persons . . . is liable for an additional civil penalty not to exceed \$10,000 for each violation . . .

30. The Defendant has engaged in fraudulent conduct perpetrated against senior citizens and handicapped persons which has caused the senior citizens and handicapped persons to pay grossly excessive amounts for its prescription drugs. Because the Defendant knew or should have known that its conduct was directed at senior citizens and handicapped persons, the

Court should declare that the Defendant is liable for additional civil penalties pursuant to Minn. Stat. § 325F.71.

**COUNT FOUR - MEDICAID FRAUD
MINN. STAT. § 256B.121**

31. The State realleges all of the above paragraphs.

32. Minn. Stat. § 256B.121 provides:

Any vendor of medical care who willfully submits a cost report, rate application or claim for reimbursement for medical care which the vendor knows is a false representation and which results in the payment of public funds for which the vendor is ineligible shall, in addition to other provisions of Minnesota law, be subject to an action by the state of Minnesota or any of its subdivisions or agencies for civil damages. The damages awarded shall include three times the payments which result from the false representation, together with costs and disbursements, including reasonable attorneys' fees or their equivalent.

33. The Defendant violated Minn. Stat. § 256B.121. The Defendant is a medical care vendor that furnished medical services or supplies provided or prescribed by persons authorized by state law to give such services and supplies. The Defendant willfully submitted false cost reports, rate applications, or claims for reimbursement for medical care concerning the AWP's of its drugs resulting in the payment of public funds to physicians for which the Defendant and physicians were ineligible.

34. As a direct result of the Defendant's Medicaid fraud in violation of section 256B.121, the Medicaid program has been damaged by paying grossly excessive amounts for the Defendant's prescription drugs.

COUNT FIVE - COMMON LAW FRAUD

35. The State realleges all of the above paragraphs.

36. The Defendant committed common law fraud against the Medicaid program and Minnesota Medicare beneficiaries. The Defendant falsely inflated the AWP's it provided for its drugs, including those identified in Exhibit A, with the knowledge and intent that the Medicaid program and Medicare beneficiaries would rely on the inflated AWP's in reimbursing physicians for the costs of the Defendant's drugs and determining the amount of the Medicare beneficiaries' co-payments pursuant to statutory reimbursement formulas. The Defendant also concealed its true wholesale prices from the Medicaid program and Minnesota Medicare beneficiaries. The Medicaid program and Minnesota Medicare beneficiaries relied to their detriment on the Defendant's falsely inflated AWP's in reimbursing physicians and determining Medicare beneficiaries' co-payments. The Defendant's reporting of inflated AWP's and failure to report its actual AWP's constituted false representations of past or present facts susceptible to knowledge.

37. As a direct result of the Defendant's intentional misrepresentations, the Medicaid program and Minnesota Medicare beneficiaries have been damaged by having to pay grossly excessive amounts for the Defendant's prescription drugs.

COUNT SIX - UNJUST ENRICHMENT

38. The State realleges all of the above paragraphs.

39. The Defendant has realized unlawful profits and has been unjustly enriched as a result of its fraudulent pricing representations. Because it would be unjust to allow it to profit from its unlawful conduct, the Defendant should compensate the Medicaid program and Minnesota Medicare beneficiaries for the grossly excessive amounts they paid for the Defendant's drugs and the unlawful profits the Defendant realized from its fraudulent sales.

WHEREFORE, the State requests that the Court enter judgment for the State for the following relief:

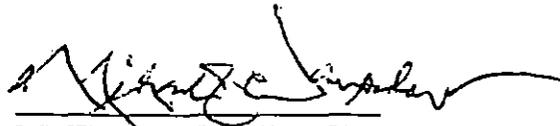
1. Declaring that the Defendant's acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 325F.69, 325F.67, 325D.71 and 256B.121.
2. Enjoining the Defendant and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries and all other persons acting in concert or participation with it, from its unlawful acts.
3. Awarding damages and/or restitution for the Medicaid program in an amount in excess of \$50,000 for the excessive prescription drug reimbursements and Medicare co-payments paid by the Medicaid program;
4. Awarding damages and/or restitution for Minnesota Medicare beneficiaries in an amount in excess of \$50,000 for the excessive prescription drug co-payments paid by Minnesota Medicare beneficiaries;
5. Awarding treble damages for the Medicaid program in an amount in excess of \$50,000 pursuant to Minn. Stat. § 256B.121;
6. Awarding civil penalties pursuant to Minn. Stat. § 8.31, subd. 3 for each separate violation of Minn. Stat. §§ 325F.67 and 325F.69;
7. Awarding enhanced civil penalties of \$10,000 for each separate violation of Minn. Stat. §§ 325F.67 and 325F.69 pursuant to Minn. Stat. § 325F.71;
8. Awarding disgorgement of the Defendant's profits from the sale of its drugs to physicians providing its drugs to Minnesota Medicaid recipients or Minnesota Medicare beneficiaries;
9. Awarding the State its costs, including costs of investigation and attorneys' fees;

10. Awarding the Medicaid program and Medicare beneficiaries prejudgment interest as allowed by law; and

11. Granting such further relief as the Court deems appropriate and just.

Dated: June 18, 2002

MIKE HATCH
Attorney General
State of Minnesota



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ATTORNEYS FOR PLAINTIFF
STATE OF MINNESOTA

EXHIBIT A

Adriamycin (doxorubicin), 10 mg

Adriamycin (doxorubicin), 2 mg/ml
5 ml (10 mg)

Adriamycin (doxorubicin), 20 mg

Adriamycin (doxorubicin), 2 mg/ml

Adriamycin (doxorubicin), 50 mg

Adriamycin (doxorubicin), 2 mg/ml
37.5 ml (75 mg)

Adriamycin (doxorubicin), 2 mg/ml
100 ml (200 mg)

Toposar (etoposide), 10 mg

Toposar (etoposide), 20 mg/ml
5 ml (100 mg)

Toposar (etoposide), 20 mg/ml
10 ml (200 mg)

Toposar (etoposide), 20 mg/ml
25 ml (500 mg)

Vincasar (vincristine sulfate), 1 mg

Vincasar (vincristine sulfate), 2 mg

Blenoxane (bleomycin), 15u

Blenoxane (bleomycin), 30u

Neosar (cyclophosphamide), 100 mg

Neosar (cyclophosphamide), 200 mg

Neosar (cyclophosphamide), 500 mg

Neosar (cyclophosphamide), 1 GM

Neosar (cyclophosphamide), 2 GM

Table 1 - Pharmacia (1997 prices)

Drug	Drug Type	NDC #	Pharmacia's AWP	Actual Price	"Spread"
Adriamycin, RDF 50 mg	Chemotherapy	00013- 1106-79	\$230	\$40	\$190
Adriamycin, PFS 200 mg	Chemotherapy	00013- 1166-83	\$946.94	\$168	\$778.94
Bleomycin, 15 IU	Chemotherapy	00013- 1616-79	\$292.43	\$175	\$105.43
Neosar, 2 gm	Chemotherapy	00013- 7525-44	\$86	\$22	\$64
Toposar, 500 mg	Chemotherapy	00013- 7525-47	\$665.38	\$97.50	\$567.88
Toposar, 1 gm	Chemotherapy	00013- 7366-73	\$1,330.75	\$195	\$1135.75
Vincasar, 1 mg	Chemotherapy	00013- 7525-48	\$370.75	\$4.15	\$366.60
Vincasar, 2 mg	Chemotherapy	00013- 7525-49	\$741.50	\$7.75	\$733.75

Table 2 - Pharmacia (2002 prices)

Drug	Drug Type	NDC #	Pharmacia's AWP	Actual Price	"Spread"
Adriamycin, RDF 50 mg	Chemotherapy	00013-1106-79	\$268.18	\$35	\$233.18
Neosar, 2 gm	Chemotherapy	00013-5646-70	\$100.28	\$25.50	\$74.78
Toposar, 20 mg/ml, 25 ml (500 mg)	Chemotherapy	00013-7356-88	\$768.51	\$60	\$708.51
Vincasar, 1 mg	Chemotherapy	00013-7456-86	\$43.23	\$4.02	\$39.21

**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (Supp. 2000).

Dated: JUNE 18, 2002



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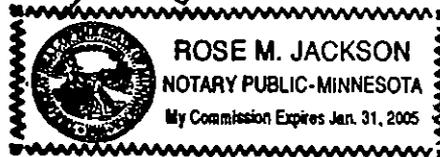
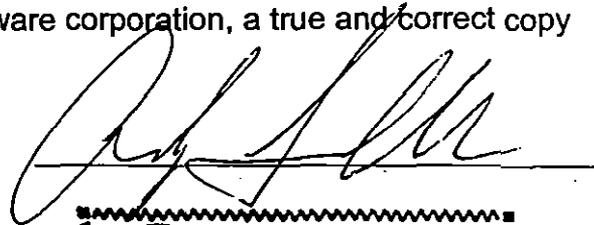
**DUPLICATE
ORIGINAL FILED WITH COURT**

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

AFFIDAVIT OF SERVICE

METRO LEGAL SERVICES

Andy Smebakken, being duly sworn, on oath says: that on the 18th day of June, 2002, at 10:00 a.m. (s)he served the attached Summons; Complaint; Plaintiff's Requests for Admissions to Defendant Pharmacia Corporation – Set I; Plaintiff's Interrogatories to Defendant Pharmacia – Set I; and Plaintiff's Request for Production of Document to Defendant Pharmacia Corporation – Set I upon Pharmacia Corporation, a Delaware corporation therein named, personally at CT Corporation Systems, Inc., 454 Wells Fargo Midland Building, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Deb Van Ness, Service of Process Specialist, an agent expressly authorized to receive service for CT Corporation Systems, Inc. the registered agent for said Pharmacia Corporation, a Delaware corporation, a true and correct copy thereof.



Subscribed and sworn to before me,
June 18, 2002.

Rose M. Jackson
Notary Public