

STATE OF WISCONSIN,

Plaintiff,

v.

ABBOTT LABORATORIES, INC., et. al.,

Defendants.

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Case No.: 04 CV 1709

**DEFENDANTS’ SECOND SET OF INTERROGATORIES DIRECTED TO PLAINTIFF**

Pursuant to Chapter 804 of the Wisconsin Statutes, Defendants<sup>1</sup> request that the State of Wisconsin (“Plaintiff”) respond to the following Interrogatories no later than 30 days from date of service. In an effort to limit the burden on Plaintiff and advance the efficient resolution of this litigation, Defendants have coordinated in propounding these Interrogatories. By submitting joint Interrogatories, Defendants do not intend to waive or limit each Defendant’s right to propound additional discovery, whether joint or individual.

**DEFINITIONS**

Defendants hereby incorporate the definitions contained in Defendants’ Second Set of Requests For Production Directed to Plaintiff, served on February 20, 2006. In addition, the following terms used in these Interrogatories, whether or not capitalized, are defined as follows:

- A. “Benefits Consultant” means any Person that provides information, counsel, or advice regarding any medical benefit or service.

<sup>1</sup> Defendants’ Second Set of Interrogatories Directed to Plaintiff is being brought on behalf of all Defendants in the above-captioned action except Boehringer Ingelheim Corporation, Boehringer Ingelheim Pharmaceuticals, Inc., Roxane Laboratories, Inc., and Ben Venue Laboratories, Inc.

- B. "PBM" means pharmacy benefits manager.
- C. "NDC" means national drug code.
- D. "Facts supporting" means to provide a complete and factual summary which chronologically sets forth the substance of any fact, action, occurrence, act, conduct, event, circumstance or communication concerning the allegation at issue, and which sets forth all factual evidence demonstrating, evidencing, supporting or tending to show any fact, action, occurrence, act, conduct, event, circumstance or communication concerning the allegation at issue.
- E. "Indirect purchasers" refers to those customers that purchase the Subject Drugs from one of defendants' direct purchasers.

#### **GENERAL INSTRUCTIONS**

**A. These Interrogatories are not limited to information in the possession of the State of Wisconsin Medicaid Program, but include information in the possession of Wisconsin's executive, administrative, and legislative offices and agencies.**

B. The responses, under oath, to each Interrogatory shall include such information as is within your custody, possession, or control, or that of your attorneys, investigators, agents, employees, experts retained by you or your attorneys or other representatives.

C. Each Interrogatory shall be answered separately.

D. To the extent that the answer to any Interrogatory varies for any of the agencies defined as the "State," each agency should answer separately.

E. Unless otherwise specifically stated, the Interrogatories below refer to the period the alleged scheme began to the present. If it is necessary to refer to a prior time to fully answer an Interrogatory, please do so.

F. If you cannot answer an Interrogatory after exercising due diligence to secure the information to do so: (i) answer to the extent possible; (ii) state the basis for your inability to answer the remainder; (iii) state whatever information or knowledge you have concerning the unanswered portion; and (iv) specify the type of information that you contend is not available, the reason the information is not available to you, and what you have done to locate such information.

G. If you decline to answer all or part of an Interrogatory based on a claim of privilege or immunity: (i) answer to the extent possible, and (ii) state the specific grounds for not answering in full and the facts you contend support your assertion of a privilege or immunity, providing sufficient information to enable the claim of privilege or immunity to be adjudicated.

H. If you claim that any specific Interrogatory is objectionable, then: (i) Identify the portion of such Request claimed to be objectionable and state the nature and basis of the objection; (ii) Identify any information withheld pursuant to such objections with sufficient particularity and in sufficient detail to permit the court to determine whether information falls within the scope of such objections; and (iii) answer any portion of such Interrogatory that is not claimed to be objectionable.

I. When an Interrogatory asks you to “state the basis” of or for a particular claim, assertion, allegation, or contention, please

- (i) Identify each and every Document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party’s information regarding the alleged facts or legal conclusions referred to by the Interrogatory;
- (ii) Identify each and every Communication which forms any part of the source of the party’s information regarding the alleged facts or legal conclusions referred to by the Interrogatory;
- (iii) state separately the acts or omissions to act on the part of any Person (Identifying the acts or omissions to act by stating their

nature, time, and place and Identifying the Persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the Interrogatory; and

- (iv) state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the Interrogatory.

J. These Interrogatories are continuing in nature as required by the Wisconsin Rules of Civil Procedure or other rules governing this Court so as to require, whenever necessary, continuing production and supplementation of responses between the initial date for production set forth above and the end of trial.

K. The singular is meant to include the plural, and vice versa.

L. The terms "and" and "or" have both conjunctive and disjunctive meanings, and the terms "each," "any," and "all" mean "each and every."

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Do you contend that any reimbursement by you for a Subject Drug that exceeds the price paid by a Provider to acquire such Subject Drug constitutes an unlawful overpayment?

### **INTERROGATORY NO. 2**

If your response to Interrogatory Number 1 is anything other than an unqualified "Yes", state, as a percentage of Provider's acquisition cost, how large the "spread" or difference between the amount reimbursed by you for a Subject Drug and the price paid by a Provider to acquire such Subject Drug must be to constitute an unlawful overpayment or grounds for liability to you for such alleged "overpayment" by the manufacturer of that Subject Drug?

**INTERROGATORY NO. 3**

Identify, by Manufacturer, drug name, NDC, and quarter, the amount that you contend you overpaid for each Subject Drug as a result of each Defendants' alleged misconduct, as described in your First Amended Complaint.

**INTERROGATORY NO. 4**

Identify the statutes, regulations, rules or other authority on which you rely to claim that Defendants had a legal duty to:

- (a) price its prescription drugs in any particular way;
- (b) refrain from discounting the prices of its prescription drugs;
- (c) refrain from confidential price negotiations concerning its prescription drugs; or,
- (d) publicly disclose the results of confidential price negotiations.

**INTERROGATORY NO. 5**

Explain in detail how you contend Defendants control the prices paid by indirect purchasers.

**INTERROGATORY NO. 6**

Explain in detail how you calculate the prescription drug reimbursement rates set forth in the Wisconsin Medicaid physician fee schedule.

**INTERROGATORY NO. 7**

Identify all reimbursement methodologies, other than the fee schedule, that you have ever used or considered using to reimburse for physician-administered drugs under the Wisconsin Medicaid Program, and the dates during which each reimbursement methodology was in effect, and for each reimbursement methodology so identified, identify the person(s) most knowledgeable about each considered and implemented methodology.

**INTERROGATORY NO. 8**

Describe the methods and corresponding reasons and rationale for determining or calculating reimbursements for each Subject Drug that you have ever priced based on MAC or for which you have used pricing that was not based on a formula derived from a pricing benchmark such as AWP, WAC, or Direct Price.

**INTERROGATORY NO. 9**

Identify your method for ensuring that pharmacist reimbursement rates established for the prescription drugs under the Wisconsin Medicaid Assistance Programs estimate the average actual acquisition cost generally and currently paid by providers as required by 42 C.F.R. § 447.331, including but not limited to:

- (a) The method you currently use, and/or have used historically, for calculating the EAC for each type of pharmaceutical product or aggregate EAC;
- (b) The date of any change to the method for calculating EAC;
- (c) The date of any proposed change, whether or not implemented, for calculating EAC;
- (d) The reasons for implementing or not implementing each proposed change in the method of calculating EAC;
- (e) The identity of each Person who proposed, recommended, or authorized the changes in the method for calculating EAC; and
- (f) The identity of the Persons most knowledgeable about your methods for calculating EAC and the changes to those methods.

**INTERROGATORY NO. 10**

Identify all Persons currently or formerly employed by you who were involved in any way in the preparation of assurance letters to the federal government representing that your EAC as calculated was the best estimate of the prices that Providers were currently and generally paying for drugs.

**INTERROGATORY NO. 11**

Identify all Persons currently or formerly employed by or serving as a contractor to you with any knowledge of, responsibility for, involvement in, or influence on:

- (a) any claim or allegation asserted in the First Amended Complaint filed by you on November 1, 2004;
- (b) the methodology used to determine the amount paid to Providers as reimbursement under Medicaid for pharmacy dispensed and physician-administered drugs, including any proposed changes to this methodology and the criteria used to develop this methodology and any Findings and/or support related thereto;
- (c) the negotiating, drafting, executing or otherwise contributing to any contract, memorandum of understanding, or agreement between you and any Provider concerning AWP or the reimbursement for the Subject Drugs;
- (d) the reimbursement for any Subject Drug that exceeded Provider acquisition costs;
- (e) the processing of payments for Providers' claims for reimbursement regarding Subject Drugs;
- (f) the adoption, rejection, amendment to, calculation, consideration, or negotiation of any State supplemental rebate program;
- (g) establishing, considering, determining, calculating, or setting of the dispensing fees or fees for other professional services payable in connection with the supply or administration of Subject Drugs by you;
- (h) establishing, considering, determining, calculating, or setting of AWP, AMP, MAC, WAC, EAC, Direct Price, Best Price, or other prices, costs, reimbursement rates, or other benchmarks for any Subject Drug.
- (i) communicating with CMS concerning the reimbursement of providers for pharmaceutical products under the Wisconsin Medical Assistance Programs; and
- (j) those portions of each of the Medicaid State Plans submitted pursuant to 42 C.F.R. § 447.333 concerning prescription drugs.

And for each such Person, state the subject of information that Person is likely to have.

**INTERROGATORY NO. 12**

Identify all Persons currently or formerly employed by or serving as a contractor to you with any knowledge that, at any time, the reimbursement for a pharmaceutical drug product based on AWP might result in reimbursement to a provider in excess of actual acquisition cost.

**INTERROGATORY NO. 13**

Explain in detail, and identify all documents relating to, how and when you first became aware that providers could obtain prescription drugs at prices that were lower than that product's published AWP.

**INTERROGATORY NO. 14**

Identify any Wisconsin Medical Assistance Program, other than Medicaid, BadgerCare and SeniorCare, which uses AWP in its reimbursement methodology for Providers and for which the State seeks damages relating to Defendants' conduct.

**INTERROGATORY NO. 15**

Identify any Wisconsin Medical Assistance Program which does not use AWP in its reimbursement methodology for Providers.

**INTERROGATORY NO. 16**

Identify the date on which the State of Wisconsin began seeking rebates for injectable drugs administered under the Medical Assistance Programs.

**INTERROGATORY NO. 17**

Set forth all facts and identify all documents created or prepared relating to your decision:

- (a) not to lower the Medicaid reimbursement rate for pharmacists from AWP-10% to AWP-15%, as proposed in 2001;

- (b) not to lower the Medicaid reimbursement rate for pharmacists from AWP-10% to AWP-18%, as proposed in 1999;
- (c) not to implement the Governor's proposal in Wisconsin's 1996-1997 state budget of a "best price" reimbursement methodology;
- (d) not to lower the Medicaid reimbursement rate for pharmacists from AWP-11.25% to AWP-15%, as proposed in 2003; and
- (e) not to set the Medicaid reimbursement rate for brand name and certain generic drugs under Medicaid to AWP-16% as proposed in the 2005-2007 budget act.

**INTERROGATORY NO. 18**

Identify all departments, agencies, boards, commissions, organizations, consultants, accountants, task forces, or any other entity, including the members of such entities, that have reviewed or analyzed, at any time, your reimbursement of or expenditures for pharmaceutical products or dispensing fees, including but not limited to any State "medical care advisory committee" (42 C.F.R. § 431.12(b)).

**INTERROGATORY NO. 19**

If reimbursement, or a proposal for reimbursement, for any Subject Drug was ever based on a percentage adjustment from a benchmark, including but not limited to AWP, WAC, or Direct Price, explain the policy or other reasons for the percentage adjustment, and any Findings regarding the impact of any such adjustments on Medicaid Beneficiaries, including but not limited to, any internal or external assessments, studies, analyses, reviews, plans, reports, or audits conducted by you or on your behalf (whether or not performed at your direction) regarding the possible effect various reimbursement amounts or methodologies could potentially have, or were having, on beneficiary access to medicine or medical treatment, and all Persons who were involved in such internal or external assessments, studies, analyses, reviews, plans,

reports, or audits conducted by you or on behalf of you (whether or not performed at your direction).

**INTERROGATORY NO. 20**

State whether, at any time, you made any effort to ascertain any Provider's actual acquisition cost or pharmacists' actual dispensing fees for any of the Subject Drugs and, if so, describe those efforts in detail, and identify each Person involved in any such effort.

**INTERROGATORY NO. 21**

Identify each Provider who actually received alleged "inflated" amounts of reimbursement from you on account of any alleged fraud, scheme, misrepresentation, concealment, negligence, or other culpable conduct by any Defendant. For each Provider identified, state whether you have, by action, administrative proceeding, or otherwise, sought to recover alleged overpayments from the Providers who allegedly received excessive amounts of reimbursement as a direct or indirect result of alleged inflated AWP, WAC, or Direct Price, and, if so, identify each such action, proceeding or other recovery effort; and if not, state the basis for your failure to do so.

**INTERROGATORY NO. 22**

Identify each Third Party Administrator, fiscal agent, Benefits Consultant, other consultant, or PBM contacted, considered, retained, or hired by you to perform any services for you concerning pharmaceutical product prices, costs, reimbursement, utilization, or benefits, and describe the activity that Person performed or was considered for, and the period of time during which that Person was contracted, considered, retained, or hired by you

**INTERROGATORY NO. 23**

Identify all relevant employees from the entities identified in response to Interrogatory No. 22 with whom the State communicated regarding pharmaceutical reimbursement under the Wisconsin Medical Assistance Programs; including but not limited to:

- (a) the name(s) of the individuals;
- (b) the title(s) of the individuals;
- (c) their relationship(s) with the State of Wisconsin; and
- (d) the context of the communications.

**INTERROGATORY NO. 24**

Identify all Pricing Compendia used by the State to calculate reimbursement rates for prescription drugs, specifying the timeframe during which each was used.

**INTERROGATORY NO. 25**

Identify all communications between you and any other state or federal government, including but not limited to CMS, NAMFCU, the Department of Health & Human Services, OIG, DOJ, the GAO, Congress, its officials, agents employees, commissions, boards, divisions, departments agencies, instrumentalities, administrators, and other Persons or entities acting on their behalf, concerning usual and customary, AWP, WAC, Direct Price, AMP, MAC, EAC, Best Price, or other prices, costs, reimbursement rates, or other benchmarks.

**INTERROGATORY NO. 26**

Identify all communications between you and any person, organization, institution, or association, including pharmacy associations and the National Association of Chain Drug Stores, concerning usual and customary, AWP, WAC, Direct Price, AMP, MAC, EAC, Best Price, or other prices, costs, reimbursement rates or other benchmarks.

**INTERROGATORY NO. 27**

Identify all periodicals, listservs, publications, associations, or other media or group to which you subscribe or belong and that publish or distribute information concerning health care benefits, prices, costs, and reimbursement or state or federal health care benefit programs.

**INTERROGATORY NO. 28**

Identify all federal or state, internal or external, formal or informal, assessments, studies, analyses, reviews, or audits conducted regarding the reimbursement of prescription drugs by Wisconsin Medical Assistance Programs, which the State was aware of prior to filing its Original Complaint and provide the following information for each such assessment, study, analysis, review or audit:

- (a) the date and title;
- (b) the identity of any authors;
- (c) the employees or agents of the State who received or obtained any such assessment, study, analysis, review, or audit;
- (d) the employees or agents of the State who are most knowledgeable about any such assessment, study, analysis, review, or audit;
- (e) the results, conclusions, or findings of any such assessment, study, analysis, review, or audit; and
- (f) any action taken by the State in response to any such assessment, study, analysis, review, or audit, including but not limited to any change in the reimbursement methodology or amount used by the State for reimbursing the prescription drugs under the Wisconsin Medical Assistance Programs.

**INTERROGATORY NO. 29**

Identify any communications with individuals in which you discussed issues surrounding the filing of this lawsuit, including but not limited to:

- (a) the date(s) of such communication;
- (b) the context of the communication;
- (c) the general subject matter of the communication; and
- (d) identify all documents relating to such communications.

**INTERROGATORY NO. 30**

Identify all current and former employees or agents that have testified, provided statements to, or been interviewed by agencies of other states; CMS; NAMFCU; HHS; OIG; DOJ; the GAO; Congress; or any other federal or state institution, agency, department, or office regarding AWP, the pricing of prescription drugs, the methodologies for reimbursing prescription drugs since the inception of each Medical Assistance Program, or the establishment of EAC, including but not limited to:

- (a) the date(s) of the testimony, statement, or interview;
- (b) the context of the testimony, statement, or interview (*i.e.*, deposition, affidavit, etc.);
- (c) the general subject matter of the testimony, statement, or interview; and
- (d) identify all documents relating to such testimony.

**INTERROGATORY NO. 31**

Identify the State's trial witnesses and expert witnesses and the area(s) of their testimony.

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February 20, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2006, a true and correct copy of the foregoing document was served upon all counsel of record via electronic service pursuant to Case Management Order No. 1 by causing a copy to be sent to LexisNexis File & Serve for posting and notification.

/s/ Jennifer A. Walker

Jennifer A. Walker