



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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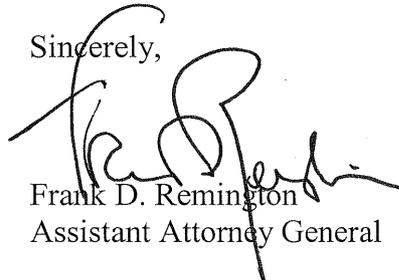
Tiffany W. Killoren
Shook, Hardy and Bacon, LLP
2555 Grand Boulevard
Kansas City, Missouri 64108-2613

Re: State of Wisconsin v. Abbott Labs, et al.
Case No. 04-CV-1709

Dear Ms. Killoren:

Enclosed you will find Plaintiff's Response to Defendant Aventis Pharmaceuticals, Inc.'s First Set of Interrogatories Directed to Plaintiff.

Sincerely,



Frank D. Remington
Assistant Attorney General

FDR:gdt

Enclosure

c: All Counsel of Record by LexisNexis File & Serve (w/enclosure)

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, *et. al.*,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT AVENTIS PHARMACEUTICALS, INC.'S
FIRST¹ SET OF INTERROGATORIES DIRECTED TO PLAINTIFF

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to Aventis Pharmaceuticals, Inc.'s "First Set of Interrogatories" as follows:

In its request, Defendant Aventis incorporates the General Instructions contained in Defendants' Second Set of Interrogatories. In response, the Plaintiff incorporates its objections made in its response to Defendants' Second Set of Interrogatories as if set forth herein.

INTERROGATORIES

INTERROGATORY NO. 1:

For each Subject Drug, by NDC, provide:

a. the AWP, by Medicaid unit, that the State alleges *should* have been published for each year for which the State seeks damages “but for” the “false,” “inflated” and “deceptive” WACs and AWPs;

b. the methodology by which the AWPs set forth in response to (a) were calculated; and

c. the identity of all documents and individuals knowledgeable about the methodology identified in response to (b).

ANSWER:

Aventis possesses all the information necessary to compute for itself the true “average wholesale price.” Plaintiff believes that the manufacturer of a drug knows the actual average wholesale price for its products. If Aventis averages the actual wholesale price charged to the retailer for each NDC, by unit, Aventis will arrive at the price that should have been reported to the various publishing companies. The Plaintiff has already addressed the methodology for computing these AWPs in prior discovery responses. “Average Wholesale Price” means the average of all the wholesale prices.

If Aventis is unwilling to use its own data, it can use the data that the Plaintiff obtained from various wholesale companies and large retail chain drug stores. All of that data has been provided to Aventis. The answer to this interrogatory may be derived from a review of the non-privileged documents in the Defendant’s possession. The burden of ascertaining the answer to this interrogatory is substantially the same for the Plaintiff as it is for the Defendant. The

¹ Aventis participated in earlier discovery sent to the Plaintiff on behalf of all defendants. Therefore, this is not Aventis’ “first” set of interrogatories, but more like their fourth set of interrogatories to the Plaintiff.

Plaintiff has not completed its analysis of this data. From this data, Aventis can compute an average of the wholesale prices charged by McKesson, Cardinal and AmeriSource Bergen.

The Defendants have already asked for and received all non-privileged documents. The Defendants have already taken a deposition of the Plaintiff's designee on the issue of the use of AWP in the Wisconsin Medicaid Program. To the extent that the Plaintiff has retained a consultant to make the computations discussed above, pursuant to Wis. Stat. § 804.05, his or her identity and the work that he or she has done is, at this time, privileged.

INTERROGATORY NO. 2:

For each Subject Drug, by NDC, for which the State claims it overpaid under its Medical Assistance Programs, provide:

- a. the total utilization in units and dollars, by Medical Assistance Program, for each year for which the State seeks damages;
- b. the total utilization in units and dollars, by each Medical Assistance Program, that was reimbursed based on a percentage off AWP for each year for which the State seeks damages;
- c. the methodology by which the State determined the total dollar amount that it claims it overpaid in reimbursements under each Medical Assistance Program at issue in this case; and
- d. the identity of all individuals knowledgeable about the total dollar amounts that the State claims it overpaid in reimbursements or knowledgeable about the methodology identified in response to (c).

ANSWER:

- a. The Plaintiff has already provided to Aventis all the DHFS MA claims data. This data contains utilization figures for the Medical Assistance Programs. This data also shows the

amounts paid by the State to providers and the basis for all such payments. This data also contains the universe of products that the Plaintiff complains it overpaid. The answer to this interrogatory may be derived from a review of the non-privileged documents in the Defendant's possession. The burden of ascertaining the answer to this interrogatory is substantially the same for the Plaintiff as it is for the Defendant.

b. See answer to a. above. Again, the answer to this question may be derived from the claims data which has already been provided. The Plaintiff has also given to the Defendants a chronology of the rates of payment as a percentage off of the published AWP.

c. see Plaintiff's previous answers to this same questions and answer to question 1 above.

d. The Plaintiff has not completed its analysis of the wholesale data necessary to determine the magnitude of the fraud perpetrated on the State of Wisconsin by Aventis. Identification of an individual with this knowledge is not possible until such time as that computation is completed.

INTERROGATORY NO. 3:

For each Subject Drug, by NDC, provide the total dollar amount that the State claims Wisconsin Medicare beneficiaries overpaid in copayments for each year for which the State seeks damages.

ANSWER: Plaintiff's claim for restitution with regard to the Medicare program are limited to the amounts paid by the State Medicaid Program as a co-payment on a dual eligible Medicaid recipient also eligible for Medicare coverage. The Plaintiff has not completed the computation of the damage to the Wisconsin Medicaid Program as a result of its payment of an inflated co-payment for dual eligible Medicaid recipients. The Plaintiff has not computed restitution

amounts for Wisconsin Medicare recipients because it does not seek recovery of these amounts for these persons.² Therefore, the Plaintiff has not completed any analysis of the magnitude of overpayment by Medicare recipients arising from Defendants' fraudulent acts.

INTERROGATORY NO. 4:

For each private payor that the State claims was overpaid for any Subject Drug, please identify the following:

- a. each Subject Drug, by NDC, for which the private payor allegedly overpaid;
- b. the total dollar amount, by year, that each third party payor overpaid in reimbursement for each Subject Drug, by NDC;
- c. the methodology by which the State calculated the total dollar amounts set forth in response to (b); and
- d. the identity of all documents and individuals knowledgeable about the methodology identified in response to (c).

ANSWER:

Presently, all of the "subject drugs" are relevant to the Medicare claim and have already been identified by the Plaintiff. The answer to these questions are the same as those given above. The Plaintiff does not possess information on utilization or overpayment for any third party payor except the Wisconsin Medicaid Program which paid the co-payment for dual eligible Medicare/Medicaid recipients. The Plaintiff has not computed restitution amounts for Wisconsin private payors because it does not seek recovery of these amounts for these entities. (*But see*

² This does not mean, however, that Plaintiff will not seek forfeitures or injunctive relief as to any claim that Defendants act violated state law as applied to a Medicare recipient. Plaintiff will and does intend to seek forfeitures for Defendants' wrongful conduct including fraudulent and deceptive acts affecting private payors and Medicare recipients.

also footnote one above). Therefore, the Plaintiff has not completed any analysis of the magnitude of overpayment by private payors from Defendants' fraudulent acts.

INTERROGATORY NO. 5:

Describe each instance in which a PBM placed a prescription drug on its formulary based solely on the "inflated AWP," identifying specifically the PBM(s) and Subject Drug(s), by NDC, the manner by which you learned of such conduct, and any actions taken by the State regarding that conduct.

ANSWER: Plaintiff's information concerning this practice is only anecdotal. The Plaintiff OBJECTS to this request to the extent that "the State" is vague and ambiguous especially to the extent it extends beyond the Medicaid Program. Plaintiff further OBJECTS to the request to describe "any action taken by the State" on the ground that it is overbroad. One action taken, obviously, is the filing of this lawsuit.

INTERROGATORY NO. 6:

Identify all "resources" available to the State to determine the "true wholesale prices" for prescription drugs, as referenced in the First Amended Complaint, including but not limited to reports, studies, audits, or consultants.

ANSWER: The Plaintiff had no reliable, readily available, and comprehensive resources to determine the "true wholesale price" other than relying on the Defendants' published prices. Aventis has already asked for and received reports, studies and audits in response to its earlier discovery request. The documents produced to the Defendants that were in the possession of the Department of Health and Family Services were thus "available" to it. Whether or not any of these reports, studies, or audits contained or disclosed "true wholesale prices" is, even at this time, still unknown.

INTERROGATORY NO. 7:

Identify all individuals, either currently or formerly employed by the State of Wisconsin, who are the most knowledgeable regarding the industry use and meaning of published AWP's.

ANSWER: The Defendants already asked about the Plaintiff's use and understanding of this term and the Defendants have already deposed at least two witnesses on this topic. Plaintiff is not aware of any individual in its employ that is most knowledgeable about how the industry uses the term or what the industry believes the term means.

INTERROGATORY NO. 8:

Identify the individuals, either currently or formerly employed by the State, who are the most knowledgeable regarding the opposition by the Pharmacists Society of Wisconsin to any proposed decrease in reimbursement rates under the Medical Assistance Programs.

ANSWER: The Plaintiff does not know who is "most knowledgeable" about any contacts by the Pharmacists Society of Wisconsin. James Vavra is generally knowledgeable about contacts to his Division from this organization.

INTERROGATORY NO. 9:

From 1990-present, identify individuals who have held the following positions at the Department of Health and Family Services, including their dates of service:

- a. Secretary, or equivalent position, responsible for overall administration of the Department of Health and Family Services;
- b. Deputy Secretary, or equivalent position, responsible for assisting in the overall administration of the Department of Health and Family Services;
- c. Medicaid Director, or equivalent position, responsible for overseeing the day-to-day administration of the Medical Assistance Programs;

d. Pharmacy Director, or equivalent position, responsible for overseeing the day-to-day administration of, and reimbursement for, the pharmacy benefits available under the Medical Assistance Programs; and

e. Medical Director, or equivalent position, responsible for overseeing the day-to-day administration of, and reimbursement for, the physician benefits available under the Medical Assistance Program.

ANSWER: The Plaintiff OBJECTS to questions d. and e. above on the ground that “pharmacy director” and “medical director” are vague and ambiguous. The DHFS does not employ a person or persons with these titles nor does a person generally do the work that is described by those terms. As to the other questions:

a. Secretary

Patricia A. Goodrich	9/2/88 – 1/5/91
Gerald Whitburn	1/7/91 – 1/2/95
Joseph Leean	7/6/95 – 3/10/01
Phyllis Dube	3/12/01 – 1/6/03
Helene Nelson	1/6/03 – 1/5/07
Kevin Hayden	1/8/07 – Present

b. Deputy Secretary

John Torgerson	9/7/88 – 1/5/91
Richard W. Lorang	1/7/91 – 5/27/00
Thomas E. Alt	5/28/00 – 12/13/02
Kenneth Munson	3/3/03 – 12/13/04
Roberta Harris	4/1/05 – 7/16/05

Susan J. Reinardy 7/17/05 – 3/18/07
Reginald Bicha 3/19/07 – 7/21/07
Karen Timberlake 7/22/07 – Present

c. Medicaid Director

Christine Nye 10/19/86 – 9/15/90
Kevin Piper 12/3/90 – 1/22/96
Peggy Bartels 4/28/96 – 12/13/02
Mark D. Moody 3/3/03 – 8/10/06
Kevin Hayden 7/31/06 – 1/6/07
Jason Helgerson 3/18/07 to Present

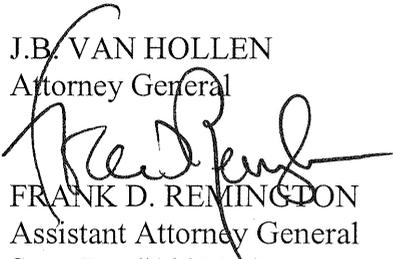
INTERROGATORY NO. 10:

From 1990-present, identify individuals who have served as the State's contact at EDS or any other fiscal intermediary for the Medical Assistance Programs, including their dates of service.

ANSWER: Mark Gajewski

Dated this 5th day of November, 2007.

J.B. VAN HOLLEN
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State Bar #1001131

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