

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 7

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04 CV 1709

ABBOTT LABORATORIES, INC., et al,

Defendants.

PLAINTIFF'S RESPONSE TO
DEFENDANTS' THIRD SET OF INTERROGATORIES

Pursuant to the Wisconsin Rules of Civil Procedure, the State of Wisconsin, by and through its undersigned counsel, respond to “Defendants’ Third Set of Interrogatories” as follows.

Preliminarily, the plaintiff OBJECTS to the defendants’ definition of the legal term “*parens patriae*” on the ground that it wrongfully assumes that the plaintiff has brought this lawsuit “on behalf of” citizens, organizations, or other entities. Although the plaintiff may generally possess such power, in this case, the plaintiff’s claims are explicitly stated in the amended complaint and clearly indicate that this law enforcement action is brought on behalf of the State of Wisconsin within its statutory authority and in pursuit of the statutory and common law remedies articulated in the amended complaint.

INTERROGATORY NO. 1

Are you asserting *Parens Patriae* claims?

ANSWER TO INTERROGATORY NO. 1

No.

INTERROGATORY NO. 2

If the answer to Interrogatory No. 1 is “No,” state the basis on which you are asserting claims on behalf of the *Parens Patriae* Plaintiffs?

ANSWER TO INTERROGATORY NO. 2

The plaintiff is not asserting claims on behalf of *Parens Patriae* plaintiffs.

INTERROGATORY NO. 3

Do you contend that the claims brought on behalf of the *Parens Patriae* Plaintiffs are limited to the following: (1) Wisconsin Part B participants who allegedly paid higher co-pays for their prescription drugs as a result of Defendants’ alleged conduct and (2) private payers who were harmed by entering into contracts with PBMs based on inflated prices as alleged in Paragraph 75 of your Complaint?

ANSWER TO INTERROGATORY NO. 3

There are no *Parens Patriae* plaintiffs. The plaintiff may seek restitution for Wisconsin Part B participants or third party payers who paid higher prices for their prescription drugs as a result of Defendants’ conduct. At this point, the State has not ascertained the identity of these persons or entities nor fixed the amount of restitution, allowed under Wis. Stats. §§ 100 and 49, which may be requested.

INTERROGATORY NO. 4

If your response to Interrogatory No. 3 is anything other than an unqualified “Yes”, state and define the other categories of claims brought on behalf of the *Parens Patriae* Plaintiffs.

ANSWER TO INTERROGATORY NO. 4

There are no *Parens Patriae* plaintiffs.

INTERROGATORY NO. 5

Please define with precision the *Parens Patriae* Plaintiffs, including but not limited to whether the *Parens Patriae* Plaintiffs include:

- (a) private payers within Wisconsin who pay or reimburse for Subject Drugs outside Wisconsin;
- (b) only Wisconsin residents;
- (c) non-Wisconsin residents who purchase Subject Drugs from a Wisconsin pharmacy.

ANSWER TO INTERROGATORY NO. 5

There are no *Parens Patriae* plaintiffs.

INTERROGATORY NO. 6

Please describe with particularity the methods by which the elements of all causes of action and damages (or pecuniary loss) will be adjudicated as to the *Parens Patriae* Plaintiffs, including:

- (a) how you plan to identify each *Parens Patriae* Plaintiff;
- (b) how you plan to identify each Subject Drug paid for by each *Parens Patriae* Plaintiff;
- (c) how you plan to identify the amount each *Parens Patriae* Plaintiff paid for each Subject Drug;
- (d) how you plan to identify the damages (or pecuniary loss) allegedly caused by each Defendant to each *Parens Patriae* Plaintiff and
- (e) how you plan to show reliance by each *Parens Patriae* Plaintiff.

ANSWER TO INTERROGATORY NO. 6

There are no *Parens Patriae* plaintiffs.

INTERROGATORY NO. 7

Please identify the individuals or entities who you plan to have testify at trial on behalf of the *Parens Patriae* Plaintiffs.

ANSWER TO INTERROGATORY NO. 7

Because there are no *Parens Patriae* plaintiffs, it is not likely that anyone will testify at trial on his/her/their/its behalf.

INTERROGATORY NO. 8

Please identify the ten largest *Parens Patriae* Plaintiffs (in terms of alleged damages/pecuniary loss) for each Subject Drug for each category of *Parens Patriae* Plaintiff.

ANSWER TO INTERROGATORY NO. 8

There are no *Parens Patriae* plaintiffs.

INTERROGATORY NO. 9

Do you plan on providing notice to the *Parens Patriae* Plaintiffs of the opportunity to opt-out of this litigation, and if so, how?

ANSWER TO INTERROGATORY NO. 9

Because there is no *Parens Patriae* plaintiff, it is not expected that any “notice” or “opt out” will be made. To the extent the State may seek restitution on behalf of aggrieved third parties, no decision has been made regarding the recipients or the process, if any, which may be utilized.

INTERROGATORY NO. 10

Please identify all PBMs that were “enabled and encouraged” to enter into contracts with private payers based on “inflated prices” as alleged in Paragraph 75 of the Complaint.

ANSWER TO INTERROGATORY NO. 10

The plaintiff is generally aware that Pharmacy Benefit Managers enter into contracts with clients that provide the PBM with a reimbursement based on the published AWP. The plaintiff claims in paragraph 75 of the amended complaint that this transaction, like the State’s own Medicaid Program, suffers by virtue of the fact the defendants have published false and fraudulent AWPs. Navitus Health Solutions, the PBM used by the State for its own employees is but one example. The plaintiff has not yet undertaken the task of identifying the specific PBMs included in this allegation.

INTERROGATORY NO. 11

Please identify all persons currently or formerly employed by or serving as a contractor for you with any knowledge of, responsibility for, involvement in, or influence on your claim, as alleged in Paragraph No. 66 of your First Amended Complaint, that Medicare Part B participants paid substantially more for their co-pays because of Defendants’ alleged conduct.

ANSWER TO INTERROGATORY NO. 11

The plaintiff OBJECTS to the interrogatory on the ground that it is overbroad and therefore over burdensome to ask the identity of every person who has knowledge of what amounts to the

general allegation that the defendants have published or caused to be published false and fraudulent average wholesale prices. Notwithstanding this objection, the evidence relating to the State's claim concerning the co-pay made by Medicare Part-B providers will be substantially the same as the evidence relating to the false and fraudulent publication of AWP's pertaining to the State's Medicaid claim. As long as the AWP for a drug exceeds the true and correct wholesale price, then any person or governmental entity paying the whole cost or the co-pay, based on a percentage of the whole, paid more than he/she/it should have. To the extent the interrogatory inquires as to whom the plaintiff intends to use a witness on this issue, no decision has been made.

INTERROGATORY NO. 12

Please identify all persons currently or formerly employed by or serving as a contractor for you with any knowledge of, responsibility for, involvement in, or influence on your claim, as alleged in Paragraph 67 of your First Amended Complaint, that private payers have been harmed by entering into contracts with PBMs at "inflated prices."

ANSWER TO INTERROGATORY NO. 12

Preliminarily, the plaintiff OBJECTS to this interrogatory to the extent that it seeks information protected by the attorney client and attorney work product privilege. The attorneys whose names appear on the plaintiff's complaint and amended complaint had some involvement in its drafting and the names of the attorneys signing those complaints have some responsibility for the statements made therein, including paragraph 67.

Notwithstanding this objection, the plaintiff has not identified any person employed, or formerly employed by the State of Wisconsin or who is serving as a contractor with the State that has knowledge, responsibility for, involvement in, or influenced the claim made in paragraph 67 of the plaintiff's amended complaint.

INTERROGATORY NO. 13

If, in response to Interrogatory Nos. 3 and 4, you contend there are additional categories of claims brought on behalf of the *Parens Patriae* Plaintiffs, please identify all persons currently or formerly employed by or serving as a contractor for you with any knowledge of, responsibility for, involvement in, or influence on those claims.

ANSWER TO INTERROGATORY NO. 13

There are no *Parens Patriae* plaintiffs.

INTERROGATORY NO. 14

Please identify the Wisconsin private payers on whose behalf the State seeks restitution or damages. For each private payer identified, state:

- (a) the current and any prior methodology used by such payer to reimburse any portion of the cost of covered prescription drugs dispensed by pharmacists;
- (b) the current and any prior methodology used by such payer to reimburse any portion of the cost of physician-administered drugs;
- (c) the dates each methodology identified in answer to subparts (a) and (b) were in effect; and
- (d) the reasons for any change in the reimbursement methodologies.

ANSWER TO INTERROGATORY NO. 14

At this point in time, the plaintiff has not identified the private payers who were harmed by the defendants' conduct and who may be entitled to restitution.

INTERROGATORY NO. 15

If you recover a judgment in your *Parens Patriae* capacity, will you distribute those funds to the individuals and/or entities on whose behalf you make those claims? If so, how will you do it? If not, then to what uses will the State put the funds you recover?

ANSWER TO INTERROGATORY NO. 15

The plaintiff is not asserting a claim in its *Parens Patriae* capacity thus precluding the possibility of it recovering a judgment in such capacity. The plaintiff has reserved the right to seek restitution, as provided in Wis. Stats. §§ 100 and 49, on behalf of persons/entities victimized by defendants' unlawful conduct. No decision has been made regarding the distribution of these funds if sought or if awarded.

Dated this 11th day of April, 2006.



FRANK D. REMINGTON
Assistant Attorney General
State Bar #1001131

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3542