

THE STATE OF RHODE ISLAND,)
)
Plaintiff,)
)
v.)
)
CVS HEALTH CORPORATION; CVS)
PHARMACY, INC.; WALGREEN CO.; and)
WALMART, INC.,)
)
Defendants.)
)
)

C.A. No.

Plaintiff, the State of Rhode Island, by and through its Attorney General, Peter F. Neronha, brings this action against Defendants CVS Health Corporation and CVS Pharmacy, Inc.; Walgreen Co.; and Walmart, Inc. (collectively, “Defendants”) pursuant to the Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, et seq. (the “DTPA”), and the common law of the State of Rhode Island and alleges as follows:

I. STATUTORY AUTHORITY

1. This enforcement action is brought by Attorney General Peter F. Neronha, in the name of the State of Rhode Island and in the public interest pursuant to the authority granted by the DTPA, upon the ground that Defendants have engaged in unfair or deceptive acts and practices in the conduct of trade and commerce as defined in, and declared unlawful by the DTPA and have created a public nuisance prohibited by the common law of the State of Rhode Island.

2. At all times described below, Defendants and their agents have engaged in conduct affecting “commerce,” as defined in the DTPA.

3. Plaintiff has reason to believe that Defendants have caused and will cause immediate, irreparable injury, loss, and damage to the State of Rhode Island by unlawfully dispensing prescription opioids. Therefore, these proceedings are in the public interest.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter under R.I. Gen. Laws § 6-13.1-5.

5. This Court has personal jurisdiction over Defendant CVS Pharmacy because it is a Rhode Island business. This Court has personal jurisdiction over all Defendants based on the Defendants' presence within the State of Rhode Island.

6. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

III. DEFENDANT

7. Defendant CVS Health Corporation is a corporation organized under the laws of Delaware and has its principal place of business in Rhode Island, at One CVS Drive, Woonsocket, Rhode Island 02895.

8. Defendant CVS Pharmacy, Inc. is a corporation organized under the laws of Rhode Island and has its principal place of business in Rhode Island, at One CVS Drive, Woonsocket, Rhode Island 02895. Defendant CVS Pharmacy, Inc. is a subsidiary of Defendant CVS Health Corporation.

9. Defendant Walgreen, Co. is a corporation organized under the laws of Illinois and has its principal place of business in Illinois, at 108 Wilmot Road, Deerfield, Illinois 60015.

10. Defendant Walmart, Inc. is a corporation organized under the laws of Delaware and has its principal place of business in Arkansas, at 702 S.W. 8th Street, Bentonville, Arkansas 72716.

11. Defendant CVS Pharmacy is a Rhode Island business. All Defendants conduct business in the State of Rhode Island.

12. Whenever this Complaint alleges that Defendants did any act, it means that Defendants:

- a. Performed or participated in the act; or
- b. Their subsidiaries, officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of Defendants.

IV. FACTUAL BACKGROUND

13. The United States saw a nearly four-fold increase in the annual number of opioid pills dispensed by pharmacies between 1999 and 2014. This increase contributed to numerous instances of opioid abuse, dependence, addiction, and overdose deaths in the State of Rhode Island. It also contributed to a sharp increase in the use of even more powerful drugs such as fentanyl and heroin, which are sometimes used by themselves and other times used in combination with prescription opioids. Fentanyl and heroin use exacerbated opioid abuse, dependence, addiction, and overdose deaths in the State of Rhode Island.

14. Among the ways that the surge in the use of prescription opioids has caused the current public health crisis is through the diversion of prescription opioids from legitimate distribution channels to illegitimate and illegal channels. Diversion can range from forging prescriptions, to using legitimate prescriptions to obtain pills that can be resold on the street, to obtaining prescriptions from corrupt prescribers who are profiting off of their prescription pads.

15. The federal Controlled Substances Act, along with the State of Rhode Island's parallel controlled substances law, was designed to "provide an interlocking trellis of laws which

will enable government at all levels to more effectively control the [narcotic and dangerous drug] problem.” Special Message to the Congress on Control of Narcotics and Dangerous Drugs, Pub. Papers of the Presidents of the United States: Richard Nixon, 1969, at 513, 514 (July 14, 1969).

16. A main objective of these laws was to establish a closed regulatory system for the legitimate handlers of controlled drugs that would prevent controlled substances moving from legitimate channels to illegitimate channels, thereby guarding against diversion.

17. As a dispenser of opioids, Defendants played a crucial role in stopping the diversion of opioids. The law makes pharmacies and pharmacists the last line of defense in preventing the illegal diversion of controlled substances.

18. Specifically, the federal Controlled Substances Act, similar to parallel state law, obligates pharmacies to practice their “corresponding responsibility” to dispense only legitimate prescriptions for controlled substances written for legitimate medical purposes. 21 C.F.R. § 1306.04(a); R.I. Gen. Laws § 21-28-3.18(a), et seq.

19. To comply with its legal duty to dispense only legitimate opioid prescriptions written for legitimate medical purposes, a pharmacy must, among other things, engage in due diligence to identify opioid prescriptions that have one or more “red flags” that are indicia of diversion and resolve those red flags before dispensing a prescription.

20. Red flags can relate to the prescriber, the patient, and/or the physical prescription itself. Examples of red flags include, but are not limited to: (1) patients who seek to fill opioid prescriptions written by multiple doctors over a short period; (2) patients who seek to pay in cash for an opioid prescription despite having insurance information on file; (3) opioid prescriptions that appear altered or photocopied; (4) opioid prescriptions that contain misspellings or non-

standard abbreviations; or (5) opioid prescriptions written by a doctor located far away from the patient's residence or the pharmacy's location.

21. Chain pharmacy companies like Defendants have unique real-time knowledge of opioid prescriptions dispensed by their thousands of pharmacies across the country. This allows chain pharmacies like Defendants to have access to, and the ability to track, aggregate, and maintain, data related to suspicious opioid prescriptions with red flags. Thus, they are positioned to monitor, for example, the volume of opioids being dispensed in their pharmacies relative to the size of the communities they serve. As a result of the red flag data available to Defendants, they have a unique ability to spot and guard against diversion of opioids.

22. Defendants had the resources to implement systems to use their real time knowledge of their pharmacies' opioid ordering volume and prescription red flags to guard against diversion because of their enormous annual revenues. Yet Defendants did not timely implement such systems, and when they did, such systems were inadequate and ineffective, as described below.

23. Defendants failed to perform their corresponding responsibility adequately by implementing insufficient controls to identify and resolve signs of diversion, as required by federal and state controlled substances laws.

24. Defendants had policies with the stated purpose of identifying suspicious opioid orders by their retail pharmacies and conducting due diligence to resolve the suspicion. But Defendants frequently designed, or applied, their policies in such a manner that they were ineffective controls against diversion, thereby violating their legal obligations to guard against diversion of opioids by practicing their corresponding responsibility.

25. According to a DEA database known as the Automation of Reports and Consolidated Orders System (“ARCOS”), per capita opioid sales in Rhode Island were well above the national average from 2006 through 2014. In 2014 alone, the volume of opioids sold in the state would provide every man, woman, and child in Rhode Island roughly one hundred sixty-one (161) 10mg pills. Defendants together held the largest market share as buyers of opioids in Rhode Island during this period from 2006 through 2014.

26. From 2006 through 2014 according to DEA ARCOS data, Defendants CVS purchased a total of 148.8 million dosage units of opioids and held 46% of the buyer market share in Rhode Island. During this same period, Walmart and Walgreens were among the top five buyers of opioids in the State, each purchasing 41.3 million dosage units (Walgreens) and 9.6 million dosage units (Walmart).

27. According to DEA ARCOS data, at a single CVS location in East Providence the pharmacy purchased over 800,000 dosage units, or over 25 million MMEs, of opioids in 2014, in a community of 47,424 people. Similarly, according to ARCOS data, a CVS location in Wakefield purchased over 750,000 dosage units in 2014, in a community of 8,911 people. A CVS location in North Smithfield purchased enough dosage units of opioids in 2012 alone to supply 80 dosage units to every resident of the town.

28. According to DEA ARCOS data, during this time, one Woonsocket (population approx. 42,000) Walgreens purchased 5.4 million pills.

29. The sheer volume of diverted opioids has wreaked havoc throughout the State of Rhode Island and taken thousands of lives. According to data from the Centers for Disease Control and Prevention, 3,286 Rhode Islanders died due to opioid overdose between 2006 and 2021.

30. Yet for numerous opioid prescriptions in the State of Rhode Island that resulted in one or more red flags, Defendants nevertheless dispensed the opioids without first making sufficient inquiries into the legitimacy of the prescription. Defendants also implemented policies in which their pharmacists were given insufficient time and resources to practice their corresponding responsibility, resulting in Defendants' pharmacists too often ignoring or insufficiently investigating the red flags that they did identify.

31. Year after year as their opioid dispensing increased and the opioid crisis grew, Defendants failed to practice their corresponding responsibility, including dispensing controlled substances without first resolving the red flags presented by suspicious prescriptions.

32. Indeed, according to DEA ARCOS reports, between 2007 and 2014, Defendants CVS and Walgreens failed to report to the DEA a single suspicious order of controlled substances to their pharmacies in Rhode Island. Suspicious orders under DEA regulations can be orders of unusual size, unusual frequency or unusual patterns, and are indicators of possible diversion of controlled substances.

33. Defendants have faced legal action brought by the DEA and Department of Justice for conduct in Rhode Island and around the country. In April 2019, CVS Pharmacy, Inc. reached a \$535,000 settlement related to allegations that several Rhode Island pharmacies filled prescriptions for Percocet that they had reason to know were forged. In August 2015, CVS Health Corporation reached a \$450,000 settlement with the U.S. Attorney's Office for Rhode Island to resolve allegations that several of its Rhode Island stores violated the Controlled Substances Act. Over the past ten years, CVS has agreed to tens of millions of dollars in settlements related to allegations that their pharmacies violated state and federal law at pharmacies across the country. In 2013, Walgreens entered into a settlement with the DEA by

agreeing to pay \$80 million in civil penalties, marking the largest settlement in DEA history at that time.

34. Defendants knew that their internal compliance program was inadequate to fulfill their anti-diversion duties pursuant to state and federal law.

35. Through their actions and inactions in connection with the dispensing of opioids, including those alleged above, Defendants materially contributed to the creation of an opioid addiction crisis that has injured, harmed, and otherwise disrupted the lives of thousands of residents of the State of Rhode Island, as well as cost state, county and municipal governments billions of dollars in expenditures to prevent, mitigate and remedy the multitude of different societal harms and injuries caused by the addiction crisis. Defendants knew, or in the exercise of reasonable care and diligence should have known, that their actions and inactions would lead to this result.

36. Defendants' actions have and are continuing to fuel the opioids epidemic and resulting public health crisis and perpetuate the public nuisance.

**FIRST CAUSE OF ACTION
(Violations of the DTPA)**

37. Plaintiff incorporates and adopts by reference the allegations contained in paragraphs 1 through 36.

38. Defendants, in the course of dispensing opioid-containing prescription drugs, engaged in unfair or deceptive acts and practices that are prohibited by the DTPA.

39. It is an unfair or deceptive act or practice to engage in conduct that “creates a likelihood of confusion or of misunderstanding,” “engag[e] in any act or practice that is unfair or deceptive to the consumer,” and “us[e] any other methods, acts, or practices that mislead or deceive members of the public in a material respect,” in addition to other applicable types of

unfair or deceptive acts or practices evidenced by Defendants' conduct. *See* R.I. Gen. Laws § 6-13.1-1(6).

40. Defendants' practices were likely to and did in fact deceive and mislead prescribers into prescribing and consumers into seeking and taking medically unnecessary and in many cases, harmful quantities and strengths of opioids.

41. Defendants' practices were also unfair to consumers because they caused substantial injury to patients in the form of opioid abuse disorder, overdose and in some cases death, which could not have been reasonably avoided by those consumers, and which did not provide any offsetting benefits.

42. Defendants' unfair or deceptive acts and practices include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against diversion of opioids in the State of Rhode Island; and
- b. Failing to practice their corresponding responsibility and dispensing opioids in the State of Rhode Island despite not resolving red flags indicating that a prescription may be for an illegitimate purpose.

**SECOND CAUSE OF ACTION
(Common Law Public Nuisance)**

43. Plaintiff incorporates and adopts by reference the allegations contained in paragraphs 1 through 42.

44. Defendants, in the course of dispensing opioid-containing prescription drugs, created a public nuisance by unreasonably interfering with rights common to the general public as prohibited by the common law of the State of Rhode Island. Defendants' acts and practices

that unreasonably interfered with rights common to the general public include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against diversion of opioids in the State of Rhode Island; and
Failing to practice their corresponding responsibility and dispensing opioids in the State of Rhode Island despite not resolving numerous red flags indicating that prescriptions may have been for illegitimate purposes.

REQUEST FOR RELIEF

45. Plaintiff respectfully requests that the Court enter an Order:
 - a. Issuing a permanent injunction prohibiting Defendants, Defendants' officers, agents, servants, employees, attorneys – and any other person in active concert or participation with Defendant – from engaging in unfair or deceptive acts and practices in violation of the DTPA;
 - b. Ordering Defendants to pay compensatory restitution and remediation for harms suffered by consumers as set forth in R.I. Gen. Laws § 6-13.1-5;
 - c. Ordering Defendants to abate the public nuisance by paying compensatory restitution and remediation; and
 - d. Ordering Defendants to pay Plaintiff's attorneys' fees and costs of court pursuant to R.I. Gen. Laws § 6-13.1-5.
46. Plaintiff further requests that this Court grant all other relief to which the Plaintiff is entitled.

Dated: December 14, 2023

Respectfully submitted,

STATE OF RHODE ISLAND
BY ITS ATTORNEY

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ATTORNEY GENERAL,

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CERTIFICATION OF SERVICE

I, the undersigned, hereby certify that on the 14th day of December, 2023, I filed this document electronically and it is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Meghan Spooner