LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Case Law Monitor

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Each issue of *Case Law Monitor* highlights unique cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the *Case Law Monitor* helpful, and please feel free to provide feedback at info@thelappa.org.

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MEANING OF "GOOD FAITH" EFFORTS UNDER CONTROLLED SUBSTANCES ACT DETERMINED BY U.S. SUPREME COURT

***Xiulu Ruan v. United States*, U.S. Supreme Court, Case No. 20-1410 (opinion filed June 27, 2022); *Shakeel Kahn v. United States*, U.S. Supreme Court, Case No. 21-5261 (opinion filed June 27, 2022).** For previous updates on these consolidated cases, please refer to the December 2021, February 2022, and April 2022 issues of the LAPPA *Case Law Monitor*, available here. In a unanimous decision, the U.S. Supreme Court resolved the federal court of appeals split over what constitutes "good faith" efforts by doctors to meet their legal obligations under the federal Controlled Substances Act (CSA) when dispensing controlled substances. Ruan and Kahn, two doctors separately convicted of operating "pill mills" in violation of the CSA in Alabama and Wyoming, respectively, asserted that the lower courts wrongly neglected to consider whether each made good faith efforts to abide by the standards of medical practice. At the time the Supreme Court accepted review, several U.S. Courts of Appeal had reached differing conclusions over the meaning of "good faith" in this context. To overcome a good faith defense, the Second, Fourth, and Sixth Circuits found that the government must prove that a physician did not "reasonably believe" the prescriptions fell within professional norms. The First, Seventh, and Ninth Circuits held that a showing that the physician "subjectively intended" to exceed professional norms is required. The Eleventh Circuit concluded that a defendant's good faith belief "is irrelevant" to the question. The Supreme Court accepted the doctors' contentions, holding that prosecutors must prove beyond a reasonable doubt that a defendant "knowingly or intentionally acted in an unauthorized manner." Accordingly, doctors cannot be found criminally liable solely because the prescriptions fall outside accepted medical standards; it must be proven that doctors intentionally violated those standards. The Supreme Court vacated the decisions and remanded the cases back to the respective U.S. Courts of Appeal.

U.S. SUPREME COURT DENIES REVIEW OF MARIJUANA REIMBURSEMENT CASES

***Susan Musta v. Mendota Heights Dental Center, et al.*, U.S. Supreme Court, Case No. 21-676 (writ of certiorari denied June 21, 2022*); Daniel Bierbach v. Digger's Polaris, et al.*, U.S. Supreme Court, Case No. 21-998 (writ of certiorari denied June 21, 2022).** For previous updates on these cases, please refer to the April 2022 issue of the LAPPA *Case Law Monitor*, available here. The U.S. Supreme Court declined to hear two cases regarding whether employers must pay for the marijuana costs of injured workers in states where marijuana for medicinal use is legal. The U.S. Solicitor General recommended that the Court not take the cases. By denying review, the Justices leave two Minnesota Supreme Court rulings in place, which hold that the federal Controlled Substances Act preempts state laws that require employers to pay workers' compensation reimbursements for marijuana recommended for medical purposes. Moreover, state supreme courts remain split on whether federal drug law overrides state workers' compensation reimbursement requirements. Maine's highest court, like Minnesota's, ruled that federal drug law does preempt state law. In contrast, the highest courts in New Hampshire and New Jersey found the opposite.

VIRGINIA TREATMENT CENTER SETTLES FALSE CLAIMS ACT ALLEGATIONS THAT IT USED UNLICENSED PROFESSIONALS

Settlement reached July 19, 2022. According to a U.S. Department of Justice press release, the Roanoke Comprehensive Treatment Center (RCTC) agreed to pay almost $349,000 to resolve allegations that it violated the federal False Claims Act by billing Medicaid for substance use disorder treatment services not provided by the required licensed individuals. The allegations asserted that RCTC billed Virginia Medicaid from January 1, 2018 through December 21, 2020 for substance use disorder treatment counseling as though properly credentialed professionals provided the counseling, when in fact they did not.

CALIFORNIA PHYSICIAN SETTLES FALSE CLAIMS ALLEGATIONS RELATED TO ANTI-KICKBACK STATUTE

Settlement reached July 18, 2022. According to a Department of Justice press release, Dr. Gerald M. Sacks, a pain management physician from Santa Monica, California, agreed to pay over $271,000 to resolve allegations that he violated the False Claims Act. The allegations related to Sacks are: (1) prescribing buprenorphine, hydrocodone, and oxycodone to Medicare beneficiaries in exchange for receiving paid speaking and consulting work from Purdue Pharma; and (2) prescribing gabapentin, fentanyl, and tapentadol to Medicare beneficiaries in exchange for paid speaking and consulting work from Depomed, Inc. Prescribing drugs in exchange for paid speaking and consulting work from a drug manufacturer violates the federal anti-kickback statute and makes the associated claims for those prescriptions to federal health care programs false.

SOLARA SPECIALITY PHARMACY SETTLES ALLEGATIONS RELATED TO PRIOR AUTHORIZATIONS FOR INJECTABLE NALOXONE

***United States ex rel. Socol v. Solera Specialty Pharmacy LLC.*, U.S. District Court for the District of Massachusetts, Case No. 18-cv-010050 (agreement reached July 13, 2022).** Solera Specialty Pharmacy

(Solera) agreed to enter into a deferred prosecution agreement and pay a $1.31 million civil settlement to resolve allegations that it submitted fraudulent claims to Medicare for Evzio, a high-priced injectable form of naloxone. The civil settlement resolves a *qui tam* or whistleblower case brought by Rebecca Socol, a former employee of Kaléo, Inc., the manufacturer of Evzio. (Socol also brought forth a *qui tam* suit against Kaléo that settled for $12.7 million. See the December 2021 issue of LAPPA's *Case Law Monitor*, available here.) According to Solera's admissions in the criminal and civil agreements, it dispensed Evzio from January 2017 to May 2018. Because of Evzio's high price, insurers often required the submission of prior authorization requests before approving coverage for Evzio. Solera completed the prior authorization forms in place of the prescribing physician and signed the forms without the physician's authorization. Additionally, Solera submitted prior authorization requests that contained false clinical information to secure approval of the drug. Solera also waived Medicare beneficiary co-payment obligations for Evzio without analyzing whether the patient had a genuine financial hardship. Solera entered into a deferred prosecution agreement in connection with a criminal information charging the pharmacy with one count of health care fraud. Solera and its CEO, Nicholas Saraniti, also entered into a civil settlement agreement, in which they will pay $1.31 million to resolve claims under the False Claims Act. In connection with the settlements, Solera and Saraniti entered into a three-year integrity agreement with the Inspector General's Office at the U.S. Department of Health and Human Services. The agreement requires Solera to implement measures to ensure that its submission of claims complies with applicable law relating to prior authorizations and collection of beneficiary co-payments.

DOG KENNEL COMPANY SETTLES WITH EEOC IN SUBSTANCE USE DISORDER DISCRIMINATION CASE

***Equal Employment Opportunity Commission v. Family Futures Group, Inc. d/b/a Rover's Place*, U.S. District Court for the Northern District of Illinois, Case No. 1:21-cv-05191 (settlement reached July 12, 2022).** Rover's Place, a dog kennel company in suburban Chicago, agreed to pay $60,000 to settle a lawsuit brought against it by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC alleged that Rover's Place subjected an employee to a hostile working environment, inquired into his medical history, and forced him to quit the job because of his history of opioid use disorder. According to court documents, the unnamed employee worked at Rover's Place without incident until one of the owners learned of his past drug use. The owner allegedly confronted the employee in an abusive manner and inquired about his history of substance use disorder and treatment even though the employee did not use at the time and caused no issues in the workplace. In the suit, the EEOC asserted that the alleged conduct violated the Americans with Disabilities Act (ADA). Under the agreement, Rover's Place agreed to pay the aggrieved employee $60,000 in damages over the next three years. The settlement also enjoins Rover's Place from engaging in any employment practice prohibited by the ADA. Furthermore, the company must provide annual training to all employees regarding the rights of employees under the ADA and the obligations of employers under the ADA.

OWNER OF FLORIDA SOBER HOME RECEIVES 30-MONTH SENTENCE FOR KICKBACK SCHEME

***United States v. Marthe Hippolyte*, U.S. District Court for the Southern District of Florida, Case No. 9:22-cr-80002-AHS (defendant sentenced on June 29, 2022).** A Florida federal district court judge sentenced Marthe Hippolyte to 30 months in prison for a scheme to solicit and receive illegal kickbacks and bribes in exchange for referring residents of her sober home to a substance use disorder treatment center. According to court documents, Hippolyte owned Turning Point Sober Home, Inc. (Turning Point) and a related marketing company through which she operated several sober living residences in Florida. Hippolyte accepted approximately $254,000 in kickbacks and bribes—disguised as management fees—from Kenneth Chatman, the operator of Reflections Treatment Center (RTC). In exchange for the money, Hippolyte: (1) helped bring in patients from outside of Florida for referral to RTC; and (2) required residents of Turning

Point's sober homes to travel to RTC several times a week for treatment sessions and urine drug testing. With respect to the residents referred to RTC by Hippolyte, Chatman and others billed private insurers $4.5 million for medically unnecessary urine drug testing. (Chatman pled guilty in 2017 to conspiracy to commit health care fraud, money laundering, and conspiracy to commit sex trafficking, and received a sentence of 330 months in prison.) Hippolyte pled guilty on January 25, 2022, to one count of conspiracy to violate the Travel Act.[1] On June 29, 2022, the judge sentenced Hippolyte to 30 months of imprisonment, followed by 36 months of supervised release and ordered her to pay nearly $1.5 million in restitution.

ONLINE "NOOTROPICS" SELLERS SENTENCED FOR SELLING MISBRANDED AND UNAPPROVED DRUGS

***United States v. Mark Godding and Linda Godding*, U.S. District Court for the District of Colorado, Case No. 21-cr-000345 (sentences issued May 20 and June 10, 2022).** Beginning in 2017, Colorado residents Mark and Linda Godding sold products they described as "nootropics," a class of substances that allegedly boost brain performance, through the website Blue Brain Boost. Although the Goddings claimed these products constituted "smart drugs" and "cognitive enhancers" tested by independent labs and subject to quality control, the couple actually sold misbranded and unapproved new drugs imported from China. Among the drugs sold was Tianeptine Soda Powder, a new drug the U.S. Food and Drug Administration warns is prone to misuse by those with a history of opioid use disorder or overdose. Sales continued even after the Goddings received complaints from customers about unexpected negative side effects. In this criminal case, prosecutors charged the Goddings with introducing or delivering for introduction a misbranded drug into interstate commerce. Mark Godding pled guilty on January 26, 2022, and Linda Godding pled guilty the next day. Both received sentences of six months of imprisonment.

VIRGINIA HOSPITAL SETTLES CONTROLLED SUBSTANCE ACT VIOLATIONS FOR $4.36 MILLION

***In Re: Sovah Health*, U.S. District Court for the Western District of Virginia, Case No. 1:22-mc-00009 (case filed and non-prosecution agreement entered June 8, 2022).** Between 2017 and 2019, a Sovah Health (Sovah) employee stole over 11,000 Schedule II substances from Sovah facilities. In 2020, another employee stole fentanyl and hydromorphone and replaced the vials' contents with saline. In response, the United States alleged that Sovah failed to provide effective controls against the diversion of controlled substances, filled orders without a system to disclose suspicious orders of controlled substances, and failed to maintain retrievable records of controlled substances. On June 8, 2022, the parties reached a non-prosecution agreement in which Sovah agreed to accept a four-year period of increased oversight. As part of the agreement, Sovah will adopt new compliance measures, including installing cameras, establishing procedures for reporting losses and diversion of controlled substances, instituting disciplinary actions for employees responsible for theft, random drug testing for employees, and more frequent inventories of Schedule II substances. Sovah further agreed to pay a $4.36 million civil penalty to the United States, making it the third largest such settlement in history.

[1] The Travel Act (18 U.S.C. § 1952) prohibits travel or the use of facilities of interstate or foreign commerce for the purpose of furthering unlawful activity.

FTC GRANTED STIPULATED ORDER FOR TREATMENT REFERRAL SERVICE MISREPRESENTATIONS

***Federal Trade Commission v. R360 LLC et al.*, U.S. District Court for the Southern District of Florida, Case No. 0:22-cv-60924-CMA (stipulated order signed May 23, 2022).** For previous updates on this case, please refer to the June 2022 issue of the LAPPA *Case Law Monitor*, available here. The Federal Trade Commission (FTC) sued R360 LLC (R360), a company that provides marketing services to substance use disorder treatment facilities, and its owner, Steven Doumar, for deceiving people regarding the evaluation and selection criteria used to select treatment centers for their network. The FTC brought the suit under the Opioid Addiction Recovery Fraud Prevention Act of 2018, the FTC's first such suit filed under the Act. On May 23, 2022, a federal district court judge signed the stipulated order for a permanent injunction and civil penalty against R360 LLC and Doumar. The order prohibits the defendants from continuing to make misrepresentations to consumers and imposes a $3.8 million civil penalty.

MEDICAL PROVIDER FOR INMATES MUST FACE SUIT OVER METHAMPHETAMINE OVERDOSE DEATH

***Douglas C. Martinson, II v. Southern Health Partners, Inc., et al.*, U.S. District Court for the Northern District of Alabama, Case No. 5:21-cv-01144-MHH (motion to dismiss denied June 14, 2022).** A federal district court ruled that Southern Health Partners, Inc. (SHP), a corporation that provides medical care for inmates at the Madison County Jail (Jail) in Alabama, must face a lawsuit brought by the estate of an inmate who died of a methamphetamine overdose while in custody. On August 21, 2019, Christopher Bishop ingested a large amount of methamphetamine, and police arrested him shortly after. During intake at the Jail, Bishop disclosed to the intake officer that he recently ingested a large amount of methamphetamine. The intake officer circled "yes" in response to an intake form question regarding "recent ingestion of dangerous levels of drugs and/or alcohol." Bishop then saw an intake nurse and informed her as well that he had used a large quantity of methamphetamine earlier in the day. The intake nurse did not send Bishop to the hospital or take any other action. Over the next 24 hours, six other nurses allegedly learned that Bishop ingested a large dose of methamphetamine. Some nurses observed Bishop exhibiting signs and symptoms of an overdose and noticed that Bishop became unresponsive. Despite being aware of Bishop's methamphetamine use and signs of overdose, the nurses did not send Bishop to the hospital or take any other action. On August 22, 2019, Jail staff found Bishop dead in his cell. On August 8, 2021, the administrator of Bishop's estate filed suit against SHP alleging that the defendants failed to provide Bishop with basic medical care and violated his Eighth and Fourteenth Amendment rights. On January 14, 2022, the defendants moved to dismiss the complaint arguing that the plaintiff failed to adequately allege an objectively serious medical need. The court rejected this argument, holding that even a lay person knows that the ingestion of dangerous levels of drugs by a person, if left unattended, can pose a substantial risk of serious harm, including overdose and death. Because the nurses allegedly knew that Bishop exhibited physical symptoms of an overdose, yet failed to provide him with medical care, the court found this "total inaction" constituted deliberate indifference. The court also ruled that the plaintiff adequately pled a state-law medical malpractice claim.

WRONGFUL DEATH SUIT FILED AGAINST OHIO CORRECTIONAL FACILITY FOR FAILING TO PROVIDE MEDICATION

***Stacey Berrier v. Lake County, Ohio and Lake County Board of Commissioners, et al.*, U.S. District Court for the Northern District of Ohio, Case No. 1:22-cv-00813-DCN (suit filed May 18, 2022).** The mother of a woman who died while in custody of the Lake County Adult Detention Facility (LCADF) sued Lake County, Ohio and LCADF personnel and medical providers for wrongful death. Ryan Elizabeth Trowbridge suffered from multiple physical and mental health conditions, including opioid use disorder, anxiety, and depression. She took prescription medications daily, including Suboxone and the antidepressant sertraline (Zoloft), to help manage these conditions. On June 2, 2020, police arrested Trowbridge for theft and took her into custody at LCADF. While there, Trowbridge informed LCADF personnel that she took medication needing regular administration. According to the complaint, immediate cessation of sertraline and/or Suboxone without supervised tapering by a medical professional can lead to suicidal ideations. The plaintiff asserts that, while in custody, Trowbridge did not receive her medication or see a medical provider. On June 6, 2020, Trowbridge hung herself in her cell. The complaint alleges that the failure of the defendants to provide adequate and appropriate medical treatment to Trowbridge, and the failure to adopt, maintain, and enforce policies, procedures, training, and supervision that would ensure such treatment is provided to inmates when needed, constituted deliberate indifference to the serious medical needs of Trowbridge in violation of her Eighth and Fourteenth Amendment rights. The plaintiff brings forth causes of action for deliberate indifference, deliberate indifference by failure to train, and wrongful death and asks the court for compensatory and punitive damages. The plaintiff also asks the court for declaratory and injunctive relief against Lake County by enjoining its unlawful policies, practices, and customs, and ordering the County to implement policies, procedures, and training to bring its employees, agents, and contractors into compliance with constitutional standards. The defendants filed their answer on June 29, 2022.

PLAINTIFF'S MARIJUANA-BASED DISABILITY DISCRIMINATION CLAIM NOT ALLOWED UNDER NEW YORK CITY LAW

***Christopher Scholl v. Compass Group USA and Eurest Services, Inc.*, U.S. District Court for the Southern District of New York, Case No. 19-cv-6685 (motion for partial summary judgment granted July 13, 2022).** Christopher Scholl, a certified medical marijuana patient under the New York State Medical Marijuana Program, applied for a job at Compass Group USA. Scholl received an employment offer contingent upon his passing a drug test. He failed the drug test and was not hired. Scholl filed a complaint alleging that the defendants violated the New York State Human Rights Law (State Law) and the New York City Human Rights Law (City Law) by discriminating against him due to his disability. The defendants moved for partial summary judgment with respect to Scholl's claim alleging disability discrimination in violation of the City Law. The defendants argued that while State Law recognizes a person's status as a certified medical marijuana patient as a basis for a claim of disability discrimination, City Law does not. The federal district court agreed with the defendants, finding that City Law text neither defines disability to include being a certified medical marijuana patient nor provides a remedy when an employer declines to hire an individual who is engaging in marijuana use. Scholl further argued that even if being a certified medical marijuana patient is not itself a disability under the City Law, City Law still requires the defendants to hire Scholl and allow him to use marijuana as an accommodation to treat his underlying medical condition, which is chronic back pain. The defendants responded by asserting that Scholl's complaint clearly alleges that his status as a certified medical marijuana patient, not his back pain, is the basis for him being disabled in this case and that the record contained no admissible evidence showing that Scholl informed the defendants about the back pain. The court agreed with the defendants, holding that Scholl clearly made a strategic decision to prosecute the case on the theory that being a certified medical marijuana patient is itself a protected disability. The court also noted that the complaint did not allege that the defendants denied Scholl employment because of his back pain or that

they even knew he had back pain. The court granted the defendants' partial motion for summary judgment and ordered the case to proceed to trial on Scholl's claim under State Law. The parties have until September 27, 2022, to submit pretrial filings.

FEDERAL JUDGE RULES FOR THE "BIG THREE" DISTRIBUTORS IN WEST VIRGINIA OPIOID SUIT

***City of Huntington, West Virginia, et al. v. AmerisourceBergen Drug Corporation et al*, U.S. District Court for the Southern District of West Virginia, Case No. 3:17-cv-01362 (opinion filed July 4, 2022).** A federal district court judge issued a 184-page ruling in a West Virginia opioid case in favor of the "Big Three" opioid distributors: AmerisourceBergen, Cardinal Health, and McKesson (collectively, "distributors"). The verdict came almost a year after closing arguments in a bench trial in a lawsuit filed by two West Virginia local governments: Cabell County and the City of Huntington. Unlike many other states, West Virginia did not participate in the national settlement with the distributors. In this case, plaintiffs asserted that the distributors' actions created a public nuisance, but the judge ruled that state public nuisance law, as interpreted by West Virginia's Supreme Court, only applies in the context of conduct that interferes with public property or resources. The judge stated that extending public nuisance law to cover the marketing and sale of opioids would be "inconsistent with the history and traditional notions of nuisance." Additionally, the judge noted that the plaintiffs: (1) offered no evidence that the defendants distributed controlled substances to any entity without a proper registration from the U.S. Drug Enforcement Administration or the West Virginia Board of Pharmacy; and (2) failed to show that the volume of opioids distributed in the jurisdictions resulted from unreasonable conduct on behalf of the defendants. The plaintiffs sought more than $2.5 million that would have gone toward opioid abatement efforts. On July 14, 2022, the Cabell County Commission voted unanimously to appeal the verdict, and the mayor of Huntington stated that the city would appeal the verdict as well. The day after the verdict, plaintiffs' attorneys announced that they received a continuance for trial in Kanawha County Circuit Court, originally scheduled to begin on July 5, 2022. The trial in Kanawha County involves more than 100 West Virginia cities and counties against the distributors. (*In re Opioid Litigation*, Circuit Court of Kanawha County, West Virginia, Case No. 21-C-9000 Distributor).

OKLAHOMA SETTLES WITH "BIG THREE" DISTRIBUTORS

Settlement reached June 28, 2022. On June 28, 2022, Oklahoma Attorney General John O'Conner announced that the state reached a $250 million settlement agreement with the "Big Three" opioid distributors: McKesson, Cardinal Health, and AmerisourceBergen. The distributors also agreed to reimburse the state for attorneys' fees. Oklahoma did not participate in the national settlement with the distributors. The settlement will be shared between the state and its cities and counties. At least 85 percent of the total amount recovered from the distributors will go to abating the opioid epidemic in Oklahoma.

TEVA REACHES $4.25 BILLION DEAL TO SETTLE OPIOID LAWSUITS

Deal announced July 26, 2022. Teva Pharmaceutical Industries Ltd. (Teva) announced that it has reached a $4.25 billion nationwide settlement to resolve lawsuits filed against the company by state and local governments. Under the terms of the settlement, Teva will pay $3 billion in cash and provide $1.2 billion worth of naloxone. The total includes the $650 million the company has committed in previous settlements. Teva will also provide $100 million to Native American Tribes. If finalized, the settlement will be paid out over the next 13 years. The agreement will not include any admission of wrongdoing. For the deal to be finalized, it will need to be approved by state and local governments and tribes. Additionally, opioid

manufacturer Allergan, which Teva acquired in 2016, will have to reach a settlement of its own, and an agreement with Teva, before Teva's agreement can move forward. New York is not included in the settlement. (See *Recent Events in the New York State Opioid Litigation* below). On July 27, 2022, Allergan announced that it reached an agreement to pay more than $2 billion to resolve the opioid related lawsuits against it. The complete terms of the settlement, such as the timeline of the payout, are still being negotiated.

ALLERGAN AND TEVA SETTLE WITH SAN FRANCISCO

***City and County of San Francisco, et al. v. Purdue Pharma L.P., et al.*, U.S. District Court for the Northern District of California, Case No. 3:18-cv-07591-CRB (settlement reached July 12, 2022).** For previous updates on this case, please refer to the June 2022 issue of the LAPPA *Case Law Monitor*, available here. Just prior to closing arguments in San Francisco's opioid lawsuit, for which trial began in April 2022, San Francisco City Attorney David Chiu announced that Allergan and Teva Pharmaceuticals USA (Teva) agreed to settle the claims for $54 million. Under the settlement agreement, the companies will pay the city $34 million in cash and provide it with $20 million worth of naloxone. The companies did not admit to any liability or wrongdoing as part of the settlement. Walgreens is the sole remaining defendant in the San Francisco case.

RECENT EVENTS IN THE NEW YORK STATE OPIOID LITIGATION

***In Re Opioid Litigation*, New York Supreme Court, Suffolk County, Case No. 40000/2017 (suit filed March 28, 2019).** For previous updates on this case, please refer to the February 2022 issue of the LAPPA *Case Law Monitor*, available here. New York Attorney General Letitia James filed a motion to show cause on July 11, 2022, asserting that Teva Pharmaceutical Industries Ltd. (Teva Parent) should return to court to explain "significant and intentional misrepresentations" it made in winning dismissal from New York's opioid case last year. In the motion, Attorney General James asserts that Teva Parent made significant and intentional misrepresentations to the New York Office of the Attorney General (OAG) and the court about its involvement with Teva Pharmaceuticals USA (Teva USA) and its role in the United States opioid industry to evade legal accountability. According to the motion, new evidence discovered by the OAG indicates that, despite sworn testimony that Teva Parent transacted no business in the U.S., held no property in the U.S., and had no role in its American opioids business, Teva Parent was a primary decision maker for its American subsidiary, maintained property and employees in the country, and exerted control over its finances. Attorney General James argues that, in light of this new evidence, the court should vacate its previous dismissal of Teva Parent from the lawsuit to provide the OAG with an opportunity to examine Teva Parent's real role in the opioid crisis and whether it compromises Teva USA's ability to pay the state damages by improperly transferring billions of dollars out of the company. In December 2021, a jury found Teva USA guilty of violating the state's public nuisance laws, and there is a forthcoming trial to determine how much Teva USA must pay the state in damages.

RECENT EVENTS IN THE PURDUE PHARMA BANKRUPTCY PROCEEDINGS

***In re Purdue Pharma L.P.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 19-23649 (suit filed Sept. 15, 2019).**

- On June 15, 2022, U.S. Bankruptcy Judge Robert Drain stated during a hearing that he would approve a proposal to pay Purdue Pharma CEO Craig Landau a bonus of up to $2.5 million if certain performance targets are met. Judge Drain reduced the maximum payout by $500,000 as part of a compromise with the 24 states and the District of Columbia who objected to the proposed bonus.

- Judge Drain officially retired on June 30, 2022. As of July 1, 2022, Judge Sean Lane oversees the bankruptcy proceedings.

NEW HAMPSHIRE FILES OPIOID SUIT AGAINST PHARMACIES

***State of New Hampshire v. CVS Health Corporation, et al.*, Merrimack County Superior Court, Case No. 217-2022-CV-00690 (suit filed July 26, 2022).** New Hampshire Attorney General John Formella filed a civil lawsuit against several retail pharmacy chains, including CVS, Rite Aid, and Walgreens, following an investigation of alleged overdistribution and dispensing of opioids in the state. The state claims that the pharmacy chains created a public nuisance in the state by filling and failing to report prescriptions that they knew or should have known were likely being misused or diverted. The state is asking the court to require the defendants to abate the public nuisance their conduct created.

TENNESSEE CLINIC OWNER CONVICTED OF UNLAWFULLY DISTRIBUTING OPIOIDS

***United States v. Hau T. La*, U.S. District Court for the Middle District of Tennessee, Case No. 3:22-cr-00163 (jury verdict reached July 19, 2022).** A federal district court jury found a Tennessee physician guilty of unlawfully distributing opioids from his clinic. According to court documents, Hau T. La owned and operated Absolute Medical Care (AMC) in Smyrna, Tennessee. At AMC, La claimed that providing substance use disorder treatment was his primary practice, but trial evidence showed that he also prescribed opioids to some of his patients despite red flags for misuse and diversion. AMC did not accept health insurance, charged patients $200-350 per visit, and only opened for business on Fridays. Additionally, La only spent a few minutes with the patients to whom he provided opioid prescriptions. The jury convicted La of 12 counts of unlawful distribution of a controlled substance. He faces a maximum of 20 years in prison for each of these convictions. Sentencing will take place on January 5, 2023.

NEW MEXICO PHARMACY AGREES TO CIVIL PENALTIES UNDER CONTROLLED SUBSTANCES ACT

Settlement reached July 12, 2022. Joe's Pharmacy (Pharmacy) in Peralta, New Mexico agreed to pay $50,000 to settle civil claims under the Controlled Substances Act. The claims stem from U.S. Drug Enforcement Administration's on-sight inspections that occurred on August 7, 2018, and March 5, 2019. According to court documents, the Pharmacy failed to account for 24,422 doses of controlled substances, the majority of which were opioids. The inspections also revealed 112 additional record-keeping violations and four dispensing violations. Additionally, as part of its drug return process,[2] the Pharmacy failed to account for 1,231 doses of controlled substances and 15 doses of listed chemicals. Prior to this agreement, the Pharmacy reached a settlement with the New Mexico Board of Pharmacy with respect to the same conduct in May 2021.

[2] The "drug return" process is also known as reverse distribution. In this process, a reverse distribution company takes a pharmacy's unsalable, expired drug products, and sends the drugs back to the manufacturer or wholesaler for credit, or properly disposes of them. (*A Step-by-step Guide to the Pharmacy Drug Return Process*, PHARMA LOGISTICS (last visited July 13, 2022), https://pharmalogistics.com/a-step-by-step-guide-to-the-pharmacy-drug-return-process/).

TEXAS ATTORNEY GENERAL LAUNCHES INVESTIGATION OF WALMART FOR ITS ALLEGED ROLE IN THE OPIOID CRISIS

Investigation opened June 28, 2022. According to a press release, in June 2022, Texas Attorney General Ken Paxton opened an investigation into Walmart's opioid sales. The investigation will look into whether Walmart failed to report suspicious opioid orders and whether it violated the Texas Deceptive Trade Practices Act relating to the promotion, sale, dispensing, and distribution of prescription opioids. Walmart responded to Texas' civil investigative demand by stating that it will answer the Texas Attorney General's questions and denying any wrongdoing with regard to the issues being investigated.

FEDERAL GOVERNMENT'S CASE AGAINST WALMART CONTINUES

***United States v. Walmart, Inc., et al.*, U.S. District Court for the District of Delaware, Case No. 1:20-cv01744-CFC (joint status report filed July 11, 2022).** For previous updates on this case, please refer to the June 2021 issue of the LAPPA *Case Law Monitor*, available here. On November 19, 2021, the court granted Walmart's motion to pause the case until the resolution of the two U.S. Supreme Court cases regarding the meaning of "good faith" efforts under the federal Controlled Substances Act. Following the Supreme Court's June 27, 2022 decision in *Ruan* and *Kahn*, the parties filed a joint status report with the federal district court that covered several issues. First, in light of *Ruan* and *Kahn*, Walmart believes that the United States should voluntarily dismiss its first and second claims for relief, but the government declined to do so. Accordingly, Walmart suggests that the parties seek a supplemental briefing schedule with respect to Walmart's pending February 22, 2021 motion to dismiss. Second, the joint status report discloses that the United States wants to amend its complaint to add factual allegations that further demonstrate Walmart's liability under the Controlled Substances Act consistent with clarifications provided in *Ruan* and *Kahn*. Walmart requests that it be allowed to review the draft amended complaint before taking an official position about its opposition to filing. Finally, the United States informed Walmart that it intends to seek approval from the court permitting it to access the documents that Walmart produced into the document repository of the ongoing multidistrict opioid litigation (MDL) (*In re National Prescription Opiate Litigation* U.S. District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP). In turn, Walmart objects to the United States' "inappropriate and premature" attempt to access the MDL materials given Walmart's pending motion to dismiss and the United States' intention to file an amended complaint. Walmart requests that the court prohibit the United States from accessing the MDL materials until discovery has opened. On July 12, 2022, the court issued an order that the United States has until August 26, 2022, to share a draft of its proposed amended complaint with Walmart. Once the United States shares its draft, the parties must, within 14 days, meet and confer about whether Walmart will provide written consent to the filing of the proposed amended complaint. Within five days of the conclusion of the parties' meeting, if Walmart declines to provide written consent to the amendment, the United States must file a motion for leave to amend its complaint.

NORTH CAROLINA PHARMACY ORDERED TO PAY CIVIL PENALTY FOR UNLAWFUL OPIOID DISTRIBUTION

***United States v. Asheboro Drug Company, Inc., et al.*, U.S. District Court for the Middle District of North Carolina, Case No. 1:22-cv-00522-CCE-JLW (consent decree of permanent injunction signed July 12, 2022).** A federal district court entered a consent decree preventing a North Carolina pharmacy and its two pharmacists from dispensing controlled substances without taking specific steps to help ensure that the drugs will not be misused or diverted. The consent decree resolves a complaint filed by the United States on July 7, 2022, alleging that Asheboro Drug Company (Asheboro Drug) and its pharmacists, Isaac F. Brady III and Isaac F. Brady IV, filled prescriptions in violation of the Controlled Substances Act. The complaint asserts

that the defendants dispensed prescription opioids while disregarding numerous red flags suggesting substance misuse and diversion. The complaint claims that the defendants would dispense the same or similar prescriptions for multiple members of the same family, refill prescriptions early without justification, and fill prescriptions from doctors who repeatedly wrote suspect prescriptions. Asheboro Drug and its pharmacists cooperated with the government's investigation, agreed to pay a $300,000 civil penalty, and agreed to abide by the consent decree of injunction. The injunction prohibits the defendants from filling certain red flag prescriptions and requires the defendants to fill other prescriptions only after receiving documentation justifying the prescription.

U.S. SUPREME COURT DECLINES TO HEAR APPEAL OF FORMER INSYS EXECUTIVE

***John Kapoor v. United States*, U.S. Supreme Court, Case No. 21-994 (writ of certiorari denied June 13, 2022).** For previous updates on this case, please refer to the February 2022 issue of the LAPPA *Case Law Monitor*, available here. The U.S. Supreme Court declined, without comment, to hear an appeal by Insys Therapeutics, Inc. (Insys) founder John Kapoor. Kapoor asked the Court to overturn his conviction for violating the Racketeer Influenced and Corrupt Organizations Act with respect to the marketing of the fentanyl-based drug spray, Subsys. The Justices left intact the five-and-a-half-year prison sentence imposed on Kapoor after his 2019 conviction for running the nationwide racketeering scam. The Supreme Court also rejected an appeal by Sunrise Lee, a former Insys regional sales manager sentenced to a year in prison for her role in the scheme.

ABOUT LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

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