

STATE OF MARYLAND

v.

WALGREEN CO.,
108 Wilmot Road,
Deerfield, Illinois 60015,

Defendant.

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IN THE

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CIRCUIT COURT FOR

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FREDERICK COUNTY, MARYLAND
C-10-CV-24-000135

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No. _____

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COMPLAINT

The State of Maryland hereby commences this civil action to enforce the Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 *et seq.* (“Act”), and to obtain injunctive and monetary relief redressing unfair, abusive, and deceptive trade practices in violation of the Act that Walgreen Co. (“Walgreens” or “Defendant”) committed in the course of marketing and selling prescription opioids at retail pharmacies it operated throughout Maryland. In support of this action, the State pleads:

I. JURISDICTION AND VENUE

1. This civil action is authorized by, *inter alia*, Md. Code Ann., Com. Law §§ 13-402(b), 13-406, and 13-410.

2. This Court’s subject-matter jurisdiction is conferred by Md. Code Ann., Cts. & Jud. Proc. § 1-501.

3. This Court has personal jurisdiction over the Defendant under Md. Code Ann., Cts. & Jud. Proc. § 6-103(a) & (b)(1)-(4) because Defendant marketed and sold opioids in Maryland and caused tortious injury in Maryland by acts and omissions in Maryland.

4. Frederick County is an appropriate venue under Md. Code Ann., Cts. & Jud. Proc. § 6-201 because the Defendant regularly marketed and sold opioids in Frederick County.

II. DEFENDANT

5. Defendant is a corporation organized under the laws of Illinois that maintains its principal place of business in Illinois.

III. FACTUAL BACKGROUND

A. The Opioid Crisis

6. The opioid crisis of addiction and death continues to plague Maryland. Opioids have killed nearly 27,000 Marylanders since 2007 and kill on average almost 7 more Marylanders each day. At least hundreds of thousands of Marylanders suffer or have suffered from debilitating addictions to opioids, and, as a consequence, Maryland families and communities have suffered too. People who are addicted lead impaired lives of difficulty and despair. People who are addicted today face severe risk of death.

7. The opioid crisis consists of the misuse and abuse of lawfully manufactured prescription opioids and illicit opioids. The vast majority of people who misuse or abuse illicit opioids started down the path of abuse and addiction by abusing and becoming addicted to prescription opioids, either by taking opioids prescribed to them or by taking opioids overprescribed to others.

8. There is broad scientific consensus that the opioid crisis was caused by the overprescription, overdistribution, and over-dispensing of opioids and other controlled substances that resulted from unfair, abusive, and deceptive marketing activities of manufacturers, distributors, dispensers, and others in the pharmaceutical industry who sought to profit from a vastly expanded market for these drugs. These practices generally have included, among others: (a) deceiving prescribers and patients about the benefits of opioids; (b) minimizing or omitting the extraordinary risks of addiction and death; (c) manipulating the addictive propensities of

prescription opioids to get people hooked; (d) paying kickbacks, rebates, or providing other inducements; and (e) failing to fulfill legal duties to safeguard the health of members of the public who ultimately consumed these drugs.

9. As a consequence of these and other practices, the United States saw a nearly four-fold increase in the annual number of opioid pills dispensed by pharmacies between 1994 and 2014. At the same time, it witnessed a corresponding increase in the number of opioid-related deaths and the rise and expansion of the ongoing opioid crisis.

10. Pharmacies sell drugs at retail and, in conjunction with these sales, assume and are required to assume responsibilities for protecting consumers from unsafe medications. To promote their sales, pharmacies deliver marketing messages to consumers about the safety of the drugs themselves and about the incidental services the pharmacies provide.

11. In selling prescription drugs, pharmacies are charged under state and federal law with ensuring the safe and beneficial provision of a patient's drug regimen. Ensuring drug safety is one of the key reasons why pharmacies exist.

12. Pharmacies submit to a variety of state and federal statutes and regulations, in addition to common law duties they hold to their customers. The Health Occupations Article, for example, requires that pharmacies "be operated in compliance with the law and with the rules and regulations of the Board," "be located and equipped so that the pharmacy may be operated without endangering the public health or safety," "be supervised by a licensed pharmacist who is responsible for the operations of the pharmacy at all times the pharmacy is in operation," "provide such personnel, automation, and technology as are necessary to allow the licensed pharmacist employee sufficient time to utilize the pharmacist's knowledge and training to perform competently the functions of a licensed pharmacist as required by law," and "[m]ay not offer

pharmaceutical services under any term or condition that tends to interfere with or impair the free and complete exercise of professional pharmaceutical judgment or skill.” Md. Code Ann., Health Occ. §§ 12-402 & 12-403(c).

13. These duties are heightened with respect to opioids and other narcotic drugs subject to state and federal controlled substances laws. Opioids have “been found to present an extreme danger to the health and welfare of the community” because they are “addiction-forming and addiction-sustaining.” Md. Code Ann., Crim. Law § 5-101(r)(1); *see* Md. Code Ann., Crim. Law §§ 5-101 *et seq.* (Maryland Controlled Substances Act).

14. Specifically, the federal Controlled Substances Act and Maryland Controlled Substances Act permit pharmacies to dispense only legitimate prescriptions for controlled substances written for legitimate medical purposes and require them to investigate any prescriptions that might not be. 21 C.F.R. § 1306.04(a); COMAR 10.19.03.07(C)(1); *see* Md. Code Ann., Crim. Law §§ 5-501 to 5-505, 5-701 (requiring prescriptions to dispense controlled substances); *see also* 21 U.S.C. §§ 13-801 *et seq.* (Federal Controlled Substances Act); *id.* at §§ 13-822, 823, 829 (requiring prescriptions to dispense controlled substances and requiring registration of pharmacists and pharmacies). These duties are consistent with the common notion of what a pharmacy is—a place where complex medicines, intended for personal consumption, can safely be purchased—and what pharmacies consequently market and advertise about the drugs and services they sell.

15. To comply with their legal duty to ensure that they fill only legitimate, medically appropriate prescriptions that are safe to dispense, pharmacies must, among other things, engage in due diligence to identify opioid prescriptions that may not be legitimate, appropriate, or safe, and investigate and resolve any concerns or “red flags” before dispensing a prescription.

16. Prescriptions may exhibit one or more “red flags”—attributes of the prescriber, the patient, or the prescription itself that indicate that the prescription may not be appropriate or safe for the patient. Examples of red flags include, among others: (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; (5) opioid prescriptions written by doctors located far away from the patient’s residence or the pharmacy’s location; (6) patients receiving multiple controlled substances prescriptions that may be misused or are otherwise dangerous in combination, such as those for opioids and benzodiazepines concurrently; (7) prescriptions for high doses or high quantities of opioids and other controlled substances; (8) prescriptions written by doctors who routinely prescribe high-dose opioids to a large number of patients, or who are otherwise known to be problematic; (9) patients attempting to fill an opioid prescription early; and (10) patients who appear intoxicated or show other signs of drug-seeking.

17. Many large retail pharmacy chains—including the Defendant here—are also registered distributors under the Controlled Substances Act. As registrants, these corporations operate distribution facilities from which they dispense controlled substances to their pharmacy locations.

18. In their capacity as distributors, retail pharmacy chains also have state and federal duties to maintain “effective controls and procedures to guard against theft and unlawful diversion of controlled substances.” 21 C.F.R. § 1301.71(a); COMAR 10.19.03.12.A.1; *see* 21 U.S.C. § 823(b) & (e); Md. Code Ann., Crim. Law § 5-303(b). These include requirements that distributors “design and operate . . . system[s] to disclose . . . suspicious orders of controlled

substances” and to report and refrain from filling such orders. 21 C.F.R. § 1301.74(b); *see* Md. Code Ann., Crim Law § 5-303(e); COMAR 10.19.03.12.A.1. Such orders “include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.” 21 C.F.R. § 1301.74(b); Md. Code Ann., Crim Law § 5-303(e).

19. Consumers have the right to expect, and do expect, that pharmacies will comply with their legal duties. Retail pharmacies, by the simple act of calling themselves pharmacies and opening their doors to consumers, inherently represent that the drugs they sell, when accompanied by their dispensing services, are safe and effective therapies that will enhance their customers’ physical and mental health.

20. Indeed, retail pharmacy chains—including Defendant’s pharmacy business—have for decades consistently competed with one another for consumers by representing in advertising and promotional materials that they act to ensure consumers’ health, safety, and wellbeing, and that the drugs they market and sell promote the health, safety, and wellbeing of their customers. From television advertising to signs at the point of sale, these representations—including Defendant’s—deliver a consistent and unwavering message that the drugs dispensed by the pharmacy are safe for their particular customers’ consumption.

21. As with the pharmacies’ other legal duties, consumers have the right to expect that pharmacies will adhere to their representations that the drugs they sell and the manner in which they sell them are safe and promote health and wellbeing.

B. Walgreens’s Unfair and Deceptive Practices

22. In Maryland, Walgreens failed to deliver the protections that it promised its customers, largely ignoring many of the (a) state and federal duties that it should have followed in selling opioids and (b) representations it made to consumers.

23. Walgreens operated 186 pharmacy locations throughout Maryland. It dispensed more than 228 million opioid doses from its Maryland pharmacies between 2006 and 2019. Nationwide, Walgreens distributed approximately 14.6 billion opioid doses during the same period.

24. In distributing opioids and dispensing prescriptions, Walgreens represented to consumers that it complied with applicable laws and regulations, including those applicable to dispensing and distributing prescription medications, and that it promoted patient safety. In fact, Walgreens did not comply with state or federal law or fulfill its representations that it would promote patient safety.

25. Walgreens marketed the quality, safety, and patient-focus of its pharmacy and specialty pharmacy services to Marylanders through a variety of mediums, including television and print media and digital advertisements. A Walgreens television commercial that aired in 2012, for example, depicted a pharmacist racing through the store, swinging on signs, to rush to care for a patient who had coughed. The voiceover told consumers: “It’s happening right now at your local Walgreens. Pharmacists are going above and beyond, armed with expertise and advice, with one goal in mind: To better serve you, so that nothing will get between you and the care you deserve.” Other Walgreens advertisements promised: “this is living the care in healthcare,” and that Walgreens was “putting ‘well’ within reach” and providing “wellness made easy.” These and similar routinely repeated statements informed consumers that they could expect that Walgreens was, at a bare minimum, complying with its legal duties to adequately ensure that the prescriptions it dispensed were safe.

26. Walgreens, however, did not have an adequate system of identifying and resolving red flags that appeared routinely in the opioid prescriptions its Maryland pharmacies dispensed.

An extraordinary number of opioids prescriptions dispensed by Walgreens bore red flags—problem prescribers wrote an extraordinarily high quantity of opioids to seemingly impossible numbers of consumers. Walgreens filled those prescriptions without making a sufficient—or many times, any—inquiry into the legitimacy or safety of the prescription for Walgreens customers. Some of the many examples in Maryland include the following:

27. Several Walgreens stores, for example, dispensed opioids and other controlled substances according to prescriptions written by prescribers at the now-closed Rosen-Hoffberg Rehabilitation and Pain Management Associates, P.A., practice, including collectively nearly 80,000 opioid prescriptions written by several providers in the practice, consisting of more than 5,760,000 individual doses. Despite ample evidence of problem prescribing and a negative reputation that the Rosen-Hoffberg practice had throughout the medical community, Walgreens pharmacies continued to dispense prescriptions without taking adequate steps to ensure the safety of these prescriptions. At least 116 patients served by the Rosen-Hoffberg Practice and Walgreens from 2013 to 2018 became addicted or misused opioids and later died of an opioid overdose. Some died within days of receiving their prescriptions, while others died months or years later, but in all cases, Walgreens' filling of their prescriptions contributed to their addictions and their deaths.

28. One Walgreens customer, for instance, had been receiving excessive prescriptions from a Rosen-Hoffberg prescriber that he had filled at a Walgreens pharmacy for several months. His final prescription, filled at a Walgreens a little over two weeks before he died from a fentanyl overdose in his early thirties, was to take excessive doses of oxycodone and oxymorphone together each day. At the amounts prescribed, this Walgreens customer was taking the equivalent of 630 milligrams of morphine per day. Doses of 90 milligrams of morphine per day are considered high and are associated with increased risk of addiction, illicit drug use, and death.

29. Another Walgreens customer, treated by the same Rosen-Hoffberg practice prescriber, received simultaneous prescriptions to take diazepam and oxycodone-acetaminophen. This combination—of a benzodiazepine and an opioid, which taken together increase the risks of overdose death—should have received more scrutiny, as should the fact that the customer filled these prescriptions at a Walgreens nearly 130 miles away from the Rosen-Hoffberg practice’s nearest location. The customer died 13 days later from intoxication to which diazepam, oxycodone, and other substances contributed.

30. Yet another had been receiving high combination doses of morphine sulfate and oxycodone from a provider in the Rosen-Hoffberg practice. For unknown reasons, on the customer’s last trip to Walgreens, she received only the oxycodone prescription—not the morphine prescription. Two days later, still in her early thirties, she died from an oxycodone overdose.

31. Overall, many more deaths have been associated with Walgreens’ dispensing of prescriptions written by other problematic prescribers within the State. Indeed, dispensing records and data display repeated dispensing, without any apparent investigation, of prescriptions that were inherently problematic. Walgreens dispensed sometimes shocking quantities and combinations of opioids that plainly indicate abuse and/or diversion. Walgreens failed to allow its employees sufficient time and resources to investigate the legitimacy, appropriateness, and safety of the opioid prescriptions those employees dispensed. In direct contrast to its legal duty and representations about safety to consumers, Walgreens’s policies ensured that its pharmacists and other pharmacy employees would not prioritize patient safety and health.

32. Walgreens also did not have an adequate system of monitoring and reporting suspicious orders. It failed to take action to report, investigate, or stop orders that it had to know were not medically justified, sending to its retail locations millions of pills that should not have

been dispensed. Despite having policies with the stated purpose of identifying suspicious opioid orders and requiring due diligence to resolve the suspicion, Walgreens repeatedly filled orders that clearly exceeded medical need.

33. The unfair and deceptive trade practices contributed to the creation and maintenance of an opioid addiction crisis that has taken, injured, harmed, or otherwise disrupted the lives of hundreds of thousands of Marylanders.

CAUSE OF ACTION
(Violations of the Maryland Consumer Protection Act)

34. The State incorporates and adopts by reference the allegations contained in paragraphs 1 through 33.

35. On thousands of occasions, Walgreens, in the sale or offer for sale of prescription opioids, falsely represented that the opioids it sold were safe and effective for its customers' consumption and that it had undertaken adequate steps to ensure customer safety.

36. Walgreens's practices were also unfair because they caused substantial injury to consumers, who were placed at risk of or left with addictions they could not overcome and the risk of or fact of death from those addictions, which could not have been reasonably avoided by those consumers, and which did not provide any offsetting benefits.

37. These unfair or deceptive trade practices are prohibited by Md. Code Ann., Com. Law § 13-303 and related provisions of the Consumer Protection Act.

REQUEST FOR RELIEF

38. Wherefore, the State of Maryland respectfully requests that the Court enter an Order:

- a. Issuing a permanent injunction prohibiting Defendant from engaging in deceptive acts and practices in violation of the Consumer Protection Act;

- b. Issuing permanent injunctions or other orders mandating that Defendant take affirmative steps to provide relief to consumers (including by making restitution payments to the Maryland Opioids Restitution Fund) to help those injured by its conduct and to prevent further instances of its conduct or further harm;
- c. Ordering Defendant to disgorge all ill-gotten gains;
- d. Imposing civil penalties for each violation of the Consumer Protection Act;
- e. Awarding the costs of this action; and
- f. For any such other and further relief as the nature of this cause may require.

Respectfully submitted,

February 27, 2024

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