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CHARLES D. SUSANO III
CLERK

IN THE CIRCUIT COURT OF KNOX COUNTY, TENNESSEE
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

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KNOX COUNTY CIRCUIT,
CIVIL SESSIONS
AND JUVENILE COURTS

STATE OF TENNESSEE,
ex rel. HERBERT H. SLATERY III,
ATTORNEY GENERAL and REPORTER,

Plaintiff,

v.

WALGREEN CO. and
WALGREENS BOOTS ALLIANCE, INC.,

Defendants.

JURY DEMAND

Case No. 3-230-22

COMPLAINT AND PETITION FOR ABATEMENT

1. This civil law enforcement action is brought in the name of the State of Tennessee in its sovereign capacity by Herbert H. Slatery III, Attorney General and Reporter ("State" or "Attorney General"), against Walgreen Co. and Walgreens Boots Alliance, Inc. (collectively "Walgreens" or the "Company") to protect the public, to abate and remedy Walgreens' participation in an unlawful controlled substance selling scheme, and to preserve the integrity of the commercial marketplace.

2. The State brings this suit pursuant to Tenn. Code Ann. § 29-3-103, part of Tennessee's public nuisance statute, Tenn. Code Ann. §§ 29-3-101 to -115, to abate and remedy the nuisance created from Walgreens aiding and abetting the unlawful sale of prescription narcotics and other controlled substances at the Company's Tennessee-based stores, including the seizure and forfeiture of "moneys and stock used in or in connection with the maintaining or conducting of a nuisance." Tenn. Code Ann. § 29-3-1031(d).

3. The State also brings suit pursuant to the Attorney General's common law police power to abate and remedy the public nuisance created by Walgreens' interference with the commercial marketplace and endangerment of the public health through its actions and failures to act.

4. Finally, the State brings suit under Tenn. Code Ann. § 47-18-108 as sovereign under the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 to -125, on the basis that Walgreens' conduct concerning controlled substances, which was undertaken with the knowledge, actions, and directives of Walgreens' executives and managers, violates Tenn. Code Ann. § 47-18-104(b)(43) and constitutes an unfair practice that violates Tenn. Code Ann. § 47-18-104(a).

5. The State's enforcement action seeks injunctive relief, civil penalties for Walgreens' violations of law, disgorgement of its ill-gotten gains, seizure and forfeiture of moneys and stock used in or in connection with the maintaining or conducting of a nuisance, abatement of the public nuisance that Walgreens substantially helped to create, and recoupment of the State's costs.

I. INTRODUCTION

6. Opioids have savaged the State of Tennessee. It is among the states hit hardest when it comes to the opioid crisis. The epidemic's impact on the State is often told in numbers: billions of pills, millions of prescriptions, hundreds of thousands in need of treatment, and thousands of opioid overdoses. Sadly, at least 3 Tennesseans die every day from an opioid-related overdose. But behind the numbers are people—the Tennesseans bearing the devastating impacts of this ongoing public health disaster.

7. Opioids are narcotic drugs that bind with specific receptors in the brain used to reduce the perception of pain. They include prescription pain relievers such as oxycodone,

hydrocodone, morphine, and others, which are closely related to heroin. Prescription opioids and heroin are both synthesized from poppies, have similar molecular structures, and bind to the same receptors in the human brain.

8. Due to longstanding and well-founded fears about their addictive potential and safety, prescription opioids are classified as controlled substances and are unlawful to distribute under Tennessee law, absent limited exceptions. Schedule II controlled substances (“CIIIs”), including opioids such as oxycodone and, after 2014, hydrocodone, have the highest potential for abuse among any drug that has, in limited circumstances, a recognized medical use. *See* Tenn. Code Ann. § 39-17-407; § 39-17-408(b)(1)(O), (K); 21 U.S.C. § 812(b)(2). State law prohibits anyone from knowingly participating in the diversion of opioids or from distributing opioids to fill medically unnecessary or illegitimate opioid prescriptions.

9. Prescription opioids are subject to diversion from legitimate medical, research, and scientific channels to unauthorized use and illegal sales. An inflated volume of opioids invariably leads to increased diversion and abuse. For most people who abuse prescription opioids, the source of their drugs can typically be found in the excess supply of drugs in the community. Indeed, there is a parallel relationship between the availability of prescription opioids through pharmacy channels and the abuse and diversion of these drugs and associated adverse outcomes, such as the prolific rise of heroin and fentanyl.

10. The National Institute of Health estimates that “nearly 80 percent of heroin users reported using prescription opioids prior to heroin.” The CDC estimates that individuals who abuse prescription opioids are 40 times more likely to abuse or be dependent on heroin. The CDC has even gone so far as to call prescription opioids the “strongest risk factor” for heroin abuse. The surge in fatal opioid overdoses is primarily driven by the increasing availability of heroin and

increasing potency of fentanyl.

11. Because of their significant dangers, controlled substances, such as opioids, are distributed within a highly regulated, “closed” system intended to track and account for these drugs from manufacturing to the ultimate consumer. Generally speaking, this distribution system involves three key participants: (i) the manufacturer that develops and markets an opioid, (ii) the wholesaler or distributor that purchases inventory of the opioid for sale to retail pharmacies, and (iii) the retail pharmacy that sells the opioid to the patient.

12. In this closed system, each participant is responsible for its discrete links in the chain of manufacturing, distributing, and dispensing to account for every opioid that is made and eventually consumed or disposed of, all with the goal of identifying and preventing abuse and diversion.

13. While Walgreens is nationally recognizable as a retail pharmacy, it also operated as a distributor for its own pharmacies between 2006 to 2014, thereby occupying two roles within the closed system. During this time, the State of Tennessee saw the greatest increase in opioid dispensing in its history. Walgreens’ dual role provided it unique and superior knowledge of the volume of opioids flowing through its Tennessee stores and ultimately onto Tennessee streets. With its superior knowledge about where and how these highly addictive drugs were being distributed and sold, Walgreens was uniquely positioned to act in its retail role as the final two steps before opioids were placed into the hands of the citizens of Tennessee.

14. While Walgreens conducted itself in Tennessee as both retailer and distributor, it complied with the obligations of neither. Instead, Walgreens actively subverted and exploited its dual position in the supply chain and its market power to maximize its profits.

15. Red flags for possible opioid abuse and diversion from suspect pharmacies, as

identified by both Walgreens and the DEA, include:

- multiple customers receiving the same strength of controlled substances;
- no individualized dosing, and/or multiple prescriptions for the strongest dose of an opioid available;
- many customers with the same diagnosis codes written on their prescriptions;
- high percentages of patients paying for controlled substances in cash;
- customers requesting early refills for controlled substances;
- customers driving long distances to fill prescriptions;
- customers abusing or selling drugs in the parking lot;
- customers arriving in groups with each customer presenting a prescription issued by the same physician;
- multiple customers receiving the same combination of prescriptions or drug cocktails, customers with prescriptions for opioids written by physicians with specialties not associated with pain management, such as podiatry or gynecology; and
- dispensing dangerous combinations of controlled substances, such as concurrent prescriptions for an opioid, a muscle relaxer, and a benzodiazepine, collectively known as the “holy trinity.”¹

16. Walgreens’ refusal to take meaningful action in the face of a litany of red flags like the ones described above has substantially contributed to the needless oversupply of prescription opioids in the State.

17. From 2006 through 2020, Walgreens operated between 200 and 300 retail stores in Tennessee. During this time, these stores dispensed over 1.1 billion oxycodone and hydrocodone pills. With Tennessee’s population between six and seven million citizens, Walgreens alone sold

¹ Benzodiazepines are a controlled substances generally prescribed to treat anxiety, two common well-known examples being alprazolam, brand name Xanax, and diazepam, brand name Valium. One of the most common muscle relaxers prescribed as part of dangerous drug cocktails, such as the holy trinity, is carisoprodol, brand name Soma

approximately 175 oxycodone or hydrocodone pills for every man, woman, and child in the State of Tennessee. The sheer volume of opioids that Walgreens released into Tennessee was unreasonable and highly suspicious on its face.

18. Walgreens did not flood the State of Tennessee with opioids by accident. Rather, the fuel that Walgreens added to the fire of the opioid epidemic was the result of knowing—or willfully ignorant—corporate decisions. At all relevant times, Walgreens ignored numerous red flags and failed to detect, warn of, and prevent the abuse and diversion of dangerous narcotics.

19. As a distributor, Walgreens failed its duties by filling suspicious orders within the State—orders of unusual size, orders of unusual frequency, and orders that deviated substantially from normal patterns. It also failed to investigate, halt, and report these suspicious orders to appropriate authorities, preferring, instead, to reap the profits that its deficient business practices generated.

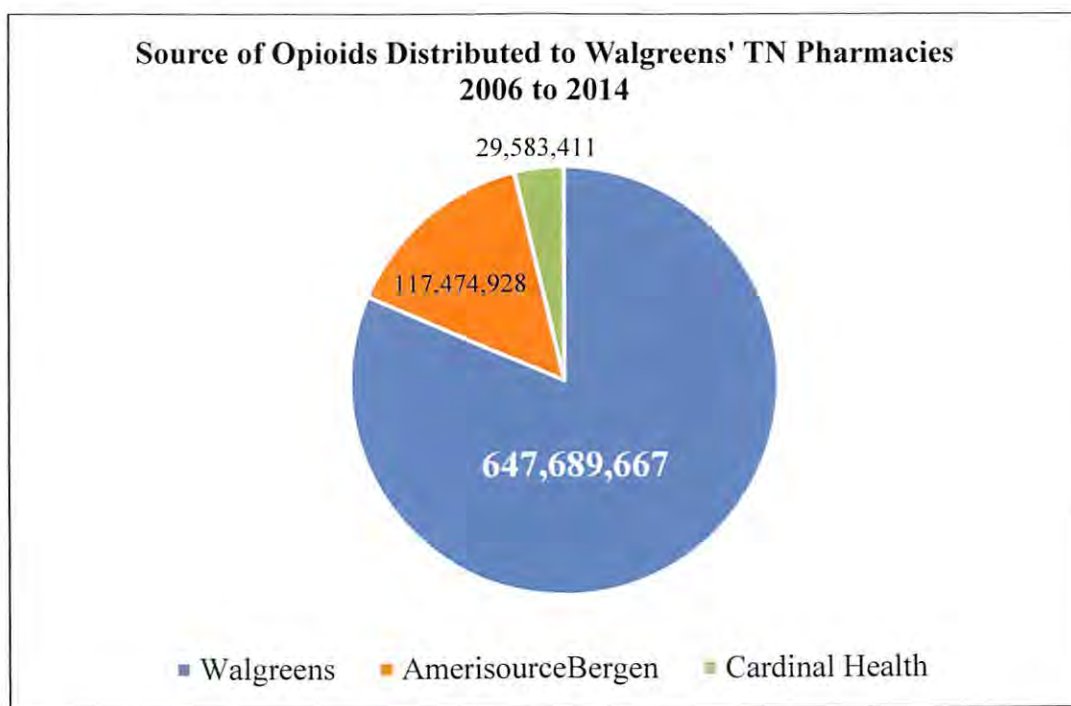
20. Walgreens failed its duties as a retail pharmacy chain by dispensing opioids at an alarming rate and volume and in a manner that clearly indicated that the drugs it was selling to its patients were, or were likely to be, misused, abused, or diverted. Pharmacies like Walgreens are the last link in the opioid supply chain and the critical gatekeeper between dangerous narcotics and the public. Walgreens utterly failed in this gatekeeper role.

21. Walgreens also actively worked to help its stores avoid or circumvent the controls meant to detect and prevent opioid diversion implemented by other distributors it used, such as Cardinal Health, Inc. (“Cardinal”), AmerisourceBergen Drug Corp. (“Amerisource”), and Andia Inc. (“Andia”).

22. Walgreens knowingly shipped and sold hundreds of millions of opioids and other dangerous controlled substances to and through its pharmacies in Tennessee despite knowledge

based on its own data, as well as reports from its own pharmacists and third parties such as its distributors, that it was facilitating abuse and diversion.

23. With locations all throughout Tennessee, Walgreens pharmacies collectively purchased approximately 795 million opioids from distributors between 2006 and 2014. During this time, it used Cardinal and Amerisource as secondary distributors to purchase 73.5 million opioids, but Walgreens “self-distributed” 81% of the 795 million to its own stores. This would have been enough to give every Tennessean at least 124 opioid dosage units (“ODUs”)² each.



24. Between 2006 and 2014, Walgreens had the second largest overall market share in terms of ODUs in the State, only 2% behind Amerisource, which had the largest, and slightly ahead of Cardinal. Yet there is a key distinction between Walgreens’ market share and the other 2 distributors—the latter served numerous customers from independent pharmacies to other retail chain pharmacies; Walgreens only distributed to its *own* pharmacies.

² An ODU refers to a single dose of an individual opioid, such as one tablet of oxycodone or one fentanyl patch.

25. Notably, Walgreens had *the highest* market share in the state from 2008 to 2012, and often by a significant margin, during what was arguably the “peak” of prescription opioid dispensing, Walgreens also had large market shares in some of Tennessee’s most populous counties. For example, it had the largest overall market share in Davidson (27%), the largest in Shelby County (26%), and the second largest in Knox County (20%).

26. But Walgreens’ oversupply of opioid was not limited to those counties. For instance, its pharmacies in Sullivan County (located in the northeast corner of Tennessee with roughly 157,000 residents) purchased enough opioids from 2006 to 2014 to give each of the County’s residents approximately 226 ODUs. Walgreens sold more ODUs *and* morphine milligram equivalents (“MMEs”)³ per capita in Sullivan County than it did in any other county in the State.

27. The numbers are just as stunning at on a more granular level. By way of example, during those 8 years, Walgreens pharmacies in cities and towns across Tennessee were selling opioids at a rate that far exceeded logic, let alone the size of the local population, and many of these cities only had a single Walgreens store. For instance, Walgreens in the following cities dispensed the following ODUs per capita:

- Tullahoma: 269
- Dunlap: 309
- Jackson: 310
- Manchester: 549
- Madisonville: 550

³ MME is a common unit used to evaluate potency among different opioids with morphine being the basis for comparison.

- Paris: 611
- Jamestown (Store 10959): 2,104

28. Walgreens utterly saturated the State of Tennessee with narcotics. The maps below show that Walgreens pharmacies in Tennessee were filling controlled substance prescriptions for patients from across the country. To avoid raising suspicion and potentially being reported to the DEA, Walgreens ignored numerous red flags while using its multitude of stores in Tennessee to dramatically increase the volume and flow of opioids, as well as profits.

29. Walgreens knew that the high volumes of opioids it was selling from its pharmacies, including Stores 3535, 3536, 3537, 3798, 5373, 5474, 5828, 6223, 10959, and 13659, were highly suspect and were being diverted and abused all across the State. Walgreens had access to dispensing and distribution information from all of its stores, as well as complaints and reports from its pharmacists about problematic prescribers, and knew that Stores 3535, 3536, 3537, 3798, 5373, 5474, 5828, 6223, 10959, and 13659, among others, were outliers for opioid sales.

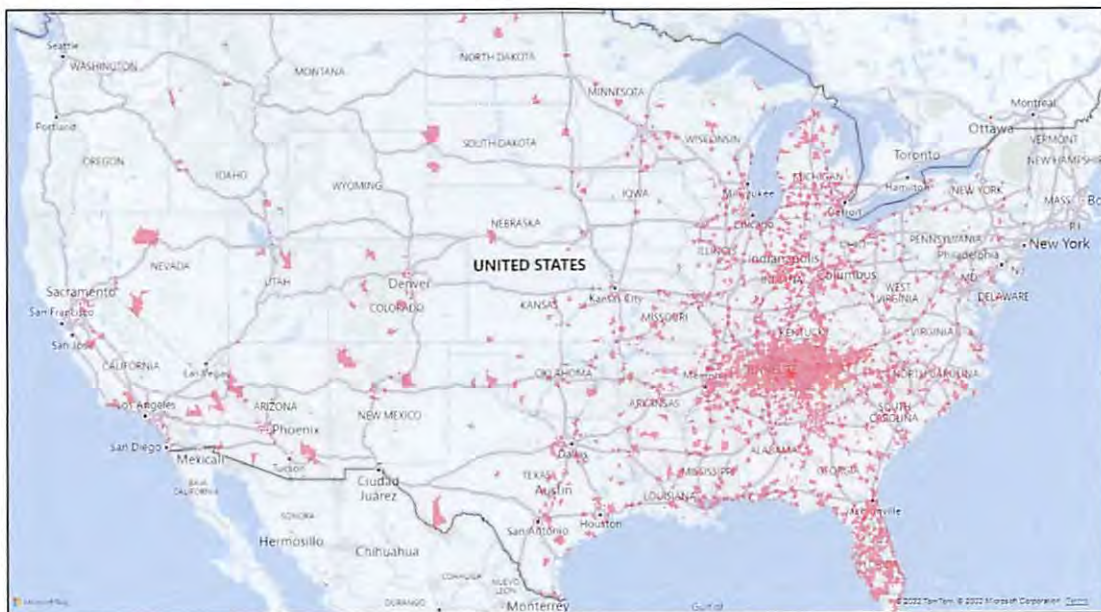
30. For example, Stores 3798 and 5373 operate less than three miles apart in Knoxville. Between these two stores (two of just 22 in Knox County), over *17 million* ODU's flowed into the local community from 2006 to 2020.

31. Walgreens used the proximity of these stores to avoid raising red flags with Walgreens' distributors by balancing the opioid orders between the two stores. When the orders placed by Store 3798, a national Walgreens top-15 opioid-dispensing pharmacy in Tennessee, began to raise red flags with Walgreens or its distributors, Walgreens steered customers to Store 5373, which itself was a top-50 opioid-dispensing store, so that Walgreens could continue supplying opioids into the local community without having its suspicious orders being reported to the DEA.

on Stores 6223 and 5474 by spreading customers between the two. This dodged red flags that would have been raised by any one store's ordering, thus avoiding suspicious order reports being sent to the DEA, and resulted in more of its opioids flooding the Cookeville-Crossville area.

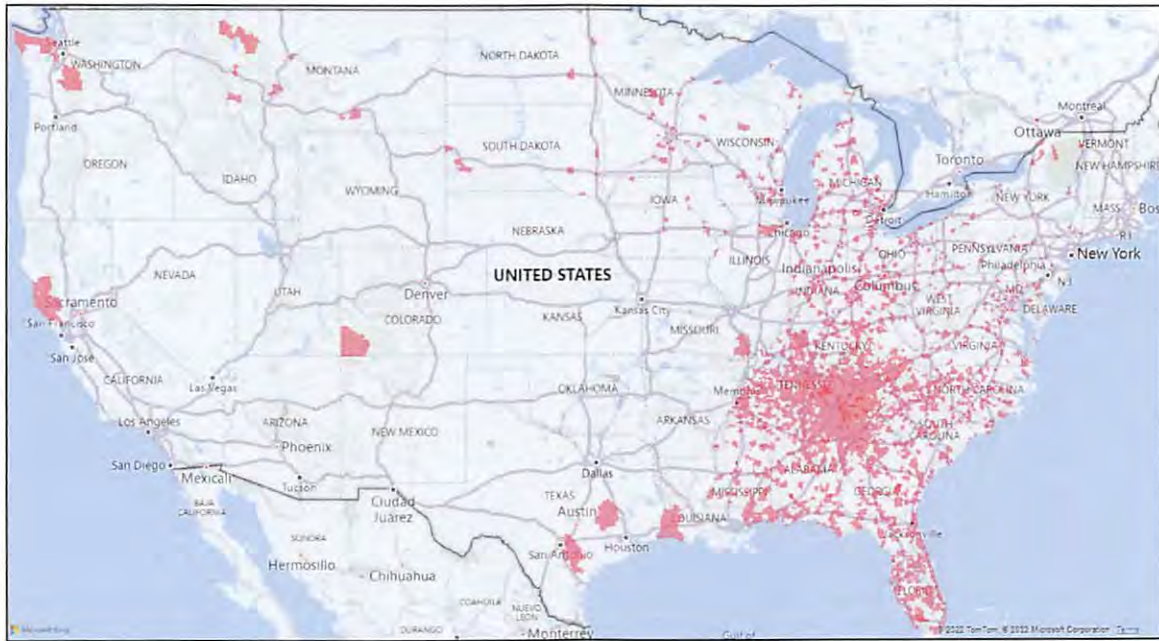
36. Between the two stores, *over 20 million* opioid pills entered the Crossville and Cookeville communities, enough for each of the combined 50,000 residents to receive approximately 400 ODU's each.

37. As with others, Stores 6233 and 5474 filled opioid prescriptions for patients from over *3,500 zip codes*, filling opioid prescriptions for many individuals up and down the I-75 corridor from Florida to Michigan, also nicknamed the Oxy Express.



38. Walgreens also had three stores in Hamilton County that were ranked as top opioid dispensing stores for Walgreens nationwide: Store 3537 in East Ridge, Store 3536 in Hixson, and Store 3535 in Chattanooga.

39. These three stores dispensed approximately *35 million* ODU's into the Hamilton County community, as well as filling opioid prescriptions for patients from almost *4,500* zip codes, including ones from as far away as Seattle.



40. But Walgreens' egregious conduct was not limited to east Tennessee. For instance, Store 13659 in Jackson, a city relatively near Memphis, was a top opioid dispensing Walgreens pharmacy, selling at least 30,000 pills per month into a population of less than 70,000 people.

41. Despite these remarkable numbers, when Store 13659 ran into limits on its ordering set by its distributors, Walgreens helped increase the threshold for Store 13659, simply based upon the volume that "they [Store 13659] can sell." Moreover, Walgreens actually told Store 13639 how to manipulate Walgreens' systems to artificially increase its ordering limits "if the store is not receiving enough product."

42. By helping increase the volume of opioids sent to Store 13659, Walgreens contributed to increased dispensing of opioids prescriptions for suspicious healthcare providers, such as Nurse Practitioner Jeffrey Young, whose prescribing habits eventually generated "complaints from the public stating that their family members were seeing Jeff and were now addicts." Despite numerous red flags for NP Young, Walgreens continued to fill his prescriptions through June 2017, when his practice was raided by "local law enforcement, DEA, TBI, and FBI

on January 11, 2017.” Even then, Walgreens elected not to (or was unable to) put an electronic “hard block” in Walgreens’ system for NP Young’s prescriptions, forcing individual pharmacists to be “responsible for identifying the prescription[.]”

43. There is also Store 5828, another top opioid dispensing Walgreens store from 2006 to 2019, located in Kingsport, Tennessee.

44. Store 5828 was flagged by Cardinal as a high-risk “red” store in February 2013. Rather than resolving or investigating the red flag issues identified by Cardinal, Walgreens transitioned Store 5828 to Amerisource, which also began flagging Store 5828’s orders as suspicious, specifically oxycodone.

45. By May 2014, Store 5828 anticipated dispensing 76,000 oxycodone pills per month in Kingsport, which has a population of roughly 50,000. For the next few years, Amerisource flagged these orders and others again and again. At every turn, Walgreens sought only to help Store 5828 obtain more oxycodone from Amerisource.

46. However, Store 5828 was not simply over its oxycodone limit, it repeatedly ran over the limit for “many, many” frequently abused drugs, such as oxymorphone, hydrocodone, morphine, diazepam, and alprazolam.

47. Walgreens helped Store 5828 increase ordering limits on all of these frequently abused drugs, as well.

48. Amerisource finally refused Walgreens’ efforts to increase the thresholds, but despite Amerisource’s refusal, Walgreens instructed Store 5828 to continue placing orders, and Walgreens would “try to get [them] through” and shipped anyway.

49. Walgreens’ efforts have had a direct impact on Kingsport. From 2006 to 2020, Store 5828 dispensed over *10 million* opioid pills into its community. This is enough for every

person living there to receive 200 ODUs.

50. Store 10959 in Jamestown, which has a population of about 1,600, is perhaps one of the most egregious examples of this. Store 10959 was also flagged by Cardinal as high-risk, and again, Walgreens elected to switch distributors rather than have Store 10959's orders reported to the DEA.

51. From 2006 to 2020, Store 10959 dispensed just short of *5 million* ODUs into Jamestown despite the fact that Walgreens had been warned about Store 10959's red flags for years and the fact that its own data backed up these warnings. This means Store 10959 sold enough opioids for every resident of Jamestown to receive nearly *3,000* doses.

52. For example, in May 2013, Amerisource flagged an oxycodone 10mg order from Store 10959. Even though Store 10959's opioid orders had now been flagged by both Cardinal and Amerisource within a few months, Store 10959 was only concerned about the fact that it "lost 21 customers" because of the lack of oxycodone. The Walgreens manager over Store 10959 asked Rx Integrity to "loosen the reigns on this store or at least give them an explanation as to why they are being so restricted on this product."

53. Rather than investigating the high volume of opioids entering the Jamestown community, Walgreens increased Store 10959's oxycodone ceiling to 14,000 pills to ensure that the store would receive "18 bottles [1,800 pills]" the following week. In facilitating Store 10959's massive supply of opioids for such a small community, Walgreens' only investigation or oversight as to what was taking place at the store was to provide a hollow instruction to the store to follow its inherently flawed dispensing policies, which did nothing to effectively address, let alone prevent, abuse and diversion.

54. These are far from isolated examples. Over the last 16 years, Walgreens sold

massive quantities of opioids by continuing to fail to maintain effective controls against abuse and diversion and taking affirmative steps to undermine its own opioid diversion controls and those of others. Among other things, Walgreens:

- “Killed a bill” in Tennessee that would have “require[ed] secure storage specifically, in a safe[,] of Controlled substances in a pharmacy.”
- Designed anti-diversion compliance programs, including Suspicious Order Monitoring and Good Faith Dispensing, that had significant flaws, were designed to minimize their impact on opioid sales to its stores, and yielded to Walgreen’s higher priority to generate profit. These compliance programs and policies were a low corporate priority, understaffed, fundamentally unsound, applied inconsistently, or completely ignored.
- Admitted that its Suspicious Order Monitoring Program failed to halt suspicious orders because it “would continue to send additional product to [a Walgreens store] without limit or review which made possible the runaway growth of dispensing products like Oxycodone” and which played a role in the DEA’s investigation of Walgreens.
- Directed its pharmacists to game threshold limits by transferring controlled substances, including Schedule II opioids, between its stores without filing the requisite DEA paperwork, meaning there were unreported transfers of opioids between its pharmacies.
- Pressured pharmacists to fill an increasing volume of opioid prescriptions, even if it meant filling ones that the pharmacist had concerns about:

Anticipated question: What does that mean with targets? -- Tasha and Rex to reach out to Jeremy and Dan to get a better idea of what it means for numbers and try to cover at the next Market Leadership meeting

GFD concerns doesn't relieve you from trying to attain the numbers that have been set for you

- Compensated its pharmacists based on the volume of controlled substance prescriptions they filled, including CII opioids.
- For years, did not have any method to determine if its pharmacists were complying with its dispensing policies and no process for disciplining non-compliant pharmacists.
- For years, offered no employee training regarding controlled substance dispensing or detecting red flags for opioid abuse and diversion, even after it implemented policies regarding such.

- Used its substantial market share to aggressively (and often successfully) lobby its distributors to increasingly raise ordering thresholds for its pharmacies and worked to have suspicious orders placed by its pharmacies filled but not reported to the DEA, as required by law.
- Actively solicited other distributors when Cardinal cut off opioid distribution to hundreds of Walgreens' pharmacies due to red flags.
- Instituted a "corporate push to decrease inventory," which specifically *excluded* CIIIs.

55. Walgreens not only shaped how its pharmacies sold opioids and other controlled substances, but it was also aware of serious red flags indicative of abuse and diversion, which it repeatedly ignored or downplayed despite warnings and reports from multiple sources, including its own pharmacists and distributors, as well as the DEA, Boards of Medical Examiners and Nursing, and news reports. For example, Walgreens:

- Sold large quantities of opioids, benzodiazepines, and muscle relaxers to individuals from far-away states, including Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, Wisconsin, and Washington D.C.
- Sold huge amounts of dangerous combinations of controlled substances, also known as "cocktails," such as the "holy trinity," consisting of an opioid, a benzodiazepine, and a muscle relaxer, despite recommendations such as the one from its Director of Rx Integrity, the department responsible for overseeing pharmacy compliance, who stated that "there is no[] clinical proof that a cocktail works *other than to potentiate [(or enhance)] the opiate*" and included the following in an internal Rx Integrity document: "WARNING about cocktail drugs – big red flag for the DEA. DO NOT FILL..." Nevertheless, no restrictions were put in place regarding the dispensing of these dangerous combinations.
- Refused to allow pharmacies to ban filling prescriptions for controlled substances written by certain healthcare providers, even if there was verifiable evidence that the provider was operating an illegal pill mill. For instance, one of its pharmacists repeatedly reported over a dozen red flags regarding Dr. Charles Morgan of McMinnville, including the following:

John,

Here's what we've gathered so far on Charles Dwight Morgan, NPI 1497834188, DEA # BM4137940. Please forward to whomever can make the call (probably Gene Hoover but maybe Dr. Mudd can do so).

- 1) He was paid a visit by the DEA a few months ago.
- 2) McMinnville Drug Ctr was just audited and understood it was primarily due to his prescriptions.
- 3) Currently NO pharmacy in the county (Fred's, Walmart, Sullivans, Kroger, or Webb's) will accept new patients from his office due to allocation concerns. McMinnville Drug Center and Rite Aid have given their patients a month to find new pharmacies and then will no longer fill any prescriptions from him.
- 4) McMinnville Drug Center became concerned when they received scripts from his office while they knew he was hospitalized. Apparently this coincided with his change in signature from something that just resembled a check mark to an actual signature accompanied by a stamp of said signature. Several of the pharmacies are concerned that it is the office staff, not Dr. Morgan, writing & signing the scripts.
- 5) He has started including diagnosis codes on his scripts but they are often odd- while his practice is listed with the DEA as "FAMILY PRACTICE OBSTETRICS", he has started putting "cancer" as the diagnosis for many of his patients but they are being given high dose hydro/apap with no addl therapy from himself or anyone else. This has been noticed here as well as other pharmacies with patients becoming defensive when addressed. As another example, the office has put back pain on script but the patient says they are being treated for migraines. Even on non-controls we are noticing oddities- prescriptions off market for years, such as a precursor to EpiPens, and another patient being prescribed insulin and diabetic supplies without diabetes, but rather for weight loss. We also have had repeated occurrences of him writing non-controlled medications that the patients are allergic to, but we cannot get ahold of the office to get them changed. We also have had nonsensical directions on scripts (ie, Nexium four times daily) but, again, cannot get ahold of the office to clarify.
- 6) Patients have complained at multiple pharmacies that they are paying \$60 per controlled script but cannot get anyone to fill them.
- 7) Other pharmacies have noted he is prescribing controls for patients currently serving jail time.
- 8) McMinnville Drug brought to our attention that he has patients routinely in his parking lot from 8 different counties.
- 9) We have not been able to speak to him on the phone. It's always a staff member, mostly his wife Angela who is very belligerent and antagonistic. Charles at McMinnville Drug Ctr was able to get him on the phone. The gist of the conversation was Charles' trying to get him to acknowledge several of these concerns but Dr. Morgan was also belligerent and antagonistic and threatened a lawsuit if Charles' & McMinnville Drug Ctr stopped filling his scripts.
- 10) Many of the patients that are presenting at this time are asking for their insurance to be bypassed and are willing to pay high cash prices. We checked the CSMD on several and they were too early. With the flood of close to forty patients at the same time

yesterday, we began simply explaining that we would pass our allocation limits [we've been restricted on benzodiazepines repeatedly (meaning we've run out) and hydro/apap has been close to out or just out when we get our weekly order repeatedly]. We normally have a half dozen different meds at or over our allocation limit in the RX Integrity site.

11) It's been recommended for us to pay a visit to the office, but to be honest, I would not be comfortable being in that environment at all.

12) We had numerous GFD refusals back during the spring when he began rotating oxy/apap, hydro/apap with a month supply of each but written every 2 weeks with either the patient stating he was changing the med or a note on the script stating it was okay to fill due to change of therapy. The CSMD would show a repeated pattern on these patients.

13) We've had several other pharmacies mention and have refused several of these ourselves, where he prescribes a patient with no prior history Norco 10/325, four times daily and gives them several scripts at the same time predated (which adds to confusion of whether he's in office or not).

I believe we are far past any reasonable concerns with this office and believe that we as WBA need to take steps to insulate ourselves from the practice. We've been told repeatedly to follow GFD practices and just to rely on that, but I firmly believe this practice is a danger to the community and needs to be blocked across the board from any WBA pharmacy. I fear some of these will be filled in those 8 counties that do not understand the situation with this prescriber.

Thank you,
G Brandon Potter,
RXM 07075

Despite this, Walgreens refused to let the store ban dispensing Dr. Morgan's prescriptions and did not warn other pharmacies about his prescribing practices, despite that being one of the pharmacist's specific concerns. The following year in 2016, the same store that sent the above report more than doubled the amount of cocktail drugs it dispensed that were prescribed by Dr. Morgan. Walgreens' calculated total revenue potential for Dr. Morgan in 2016 was \$1.7 million.

- Continued to fill prescriptions for controlled substances written by Nurse Practitioner Geoffrey Peterson even after a local Walgreens pharmacist flagged him as suspect in 2013 because had worked at several other pain clinics that had been shut down by the DEA, his patients had a history of doctor shopping, and he only wrote prescriptions for controlled substances but was operating a primary care clinic, where he also hoarded dogs, including in patient exam rooms. Even after NP Peterson was arrested in December 2014 for felony possession of CII's, Walgreens continued filling prescriptions for controlled substances written by him.
- Continued to fill prescriptions for controlled substances written by Nurse Practitioner Charles Larmore for patients who were part of illegal prescription opioid drug rings, despite him being one of the primary prescribers at another pain clinic which was cash only, whose staff was known by Walgreens to coach patients on how to avoid law enforcement and ran a promotion offering a free patient visit to anyone who referred ten patients to the clinic. Walgreens dispensed over two million cocktail drugs, including over 100 pounds of oxycodone.
- Filled prescriptions for controlled substances that were missing required information, such as a prescriber's DEA number.

- Filled prescriptions for as much as a gallon of liquid hydrocodone per month for a single patient, that same patient was receiving an average of 986 ODU's per prescription.
- Ignored evidence of patient doctor shopping and instead filled overlapping prescriptions from different doctors for the same controlled substances.

56. The number of opioids being ordered and dispensed by Walgreens pharmacies was so large that there could not have been a legitimate medical use for the opioids, particularly when compared to the population being served. Walgreens knew, or should have known, that a substantial majority of the opioids it was selling to its customers in Tennessee were not based on legitimate prescriptions and were being diverted in huge numbers.

57. This action is therefore brought on behalf of the State to: (i) stop Walgreens pharmacies from over-dispensing opioids within Tennessee; (ii) assess appropriate statutory penalties for violations of the Tennessee Consumer Protection Act, (iii) disgorge profits and ill-gotten gains and other Walgreens assets realized through its unlawful sale and distribution of opioids in Tennessee; (iv) seizure and forfeiture of moneys and stock used in or in connection with the maintaining or conducting of a nuisance in Tennessee; and (v) enjoin and abate the continuing public nuisance resulting from the actions of Walgreens, and force it to help solve the problem it substantially helped create and knowingly profited from.

II. PARTIES

58. The Plaintiff, State of Tennessee *ex rel.* Herbert H. Slatery III, Attorney General and Reporter, is charged with enforcing Tennessee's public nuisance statute, Tenn. Code Ann. §§ 29-3-102, -103, and the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108. The Attorney General has all common law powers except as restricted by statute, *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1990), and is expressly authorized to utilize and refer to the common law in the exercise of his duties pursuant to Tenn. Code Ann. § 8-6-109(a).

59. Defendant Walgreen Co. is an Illinois corporation registered with the Tennessee Secretary of State to conduct business in Tennessee. Walgreen Co. is a subsidiary of Walgreens Boots Alliance, Inc. and does business under the trade name “Walgreens.” It acted as a retail pharmacy in the United States, until Walgreen Co. completed the acquisition of Alliance Boots, a British pharmacy giant, in 2014.

60. Defendant Walgreens Boots Alliance, Inc. is a Delaware corporation that describes itself as the successor of Walgreen Co. Both Walgreen Co. and Walgreens Boots Alliance, Inc. have their principal place of business in Deerfield, Illinois.

61. All of the actions described in this Complaint are part of, and in furtherance of, the unlawful conduct alleged herein, and were authorized, ordered, and/or effectuated by Walgreens’ officers, agents, employees, or other representatives while actively engaged in the management of the Company’s affairs within the course and scope of their duties and employment, and/or with the Company’s actual, apparent, and/or ostensible authority.

III. PERSONAL JURISDICTION

62. As set forth below, this Court has personal jurisdiction over Walgreens based on Walgreens’ contacts in Tennessee. Among other things, Walgreens is a retail pharmacy chain with approximately 200 to 300 pharmacies in the State. Walgreens has transacted business in Tennessee including through self-distribution of opioids to its Tennessee stores and the sale of opioids through its retail pharmacies, conduct from which this action arises.

IV. STATE COURT JURISDICTION AND VENUE

63. The causes of action asserted and the remedies sought in this Complaint are based exclusively on Tennessee statutory, common, and decisional law.

64. The Complaint does not confer diversity jurisdiction upon federal courts pursuant to 28 U.S.C. § 1332, as the State is not a citizen of any state and this action is not subject to the

jurisdictional provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Additionally, the allegations in this Complaint do not invoke federal question subject matter jurisdiction under 28 U.S.C. § 1331 as no cause of action, request, or remedy necessarily arises under federal law. Under *Gunn v. Minton*, 568 U.S. 251, 258 (2013), this action raises no federal issue important to the federal system, as a whole.

65. In this Complaint, the State occasionally references federal statutes, regulations, or actions, but does so only to establish Walgreens' knowledge, to explain how Walgreens' conduct has *not* been approved by federal regulatory authorities, or to reference a *complementary* federal law or regulation to state law, but one in which the federal issue is not "necessarily raised" or "substantial." See *Dunaway v. Purdue Pharma L.P.*, Case No. 2:19-cv-00038, 2019 WL 221670, * 6 (M.D. Tenn. May 22, 2019).

66. As a court of general jurisdiction, the Circuit Court is authorized to hear this matter, based on the statutory public nuisance, common law nuisance, and TCPA claims, the amount at issue, and the relief sought pursuant to Tenn. Code Ann. §§ 16-10-101 and -110, Tenn. Code Ann. § 29-3-102, Tenn. Code Ann. § 39-12-206(a), and Tenn. Code Ann. § 47-18-108.

67. Venue is proper in Knox County pursuant to the public nuisance statute, Tenn. Code Ann. § 29-3-103, and the TCPA's specific state enforcement venue provision, Tenn. Code Ann. § 47-18-108(a)(3), because Walgreens operates 22 retail pharmacies in Knox County, where some of the alleged violations took place, and where Walgreens has and continues to conduct or transact business.

V. PRE-SUIT NOTICE

68. Consistent with Tenn. Code Ann. § 47-18-108(a)(2) and (3), the State certifies that it has provided Walgreens with ten days' notice of its intention to initiate suit, an opportunity to respond or present reasons why suit should not be instituted, and the opportunity to present a

resolution proposal.

VI. FACTUAL ALLEGATIONS

A. Prescription Opioids and Related Illicit Drugs

69. Aware of the potential dangers and addictive qualities of opioids, physicians historically prescribed them in limited circumstances. In the early 2000s, these prescribing patterns began to change, increasing the availability of, and insatiable appetite for, opioids and driving an insatiable appetite for opioids. Those in a position to feed that demand—pharmacies and distributors like Walgreens—stood to profit handsomely.

70. As prescribing habits changed, the volume of prescription opioids entering Tennessee communities dramatically increased. An increased volume of opioids invariably leads to increased diversion and abuse. Indeed, there is a parallel direct relationship between the availability of prescription opioids through pharmacy channels and the diversion and abuse of these drugs and associated adverse outcomes.

71. For most people who abuse prescription opioids, the source of their drugs is typically found in the excess supply of drugs in the community. The National Institute of Health estimates that “nearly 80 percent of heroin users reported using prescription opioids prior to heroin.” The CDC estimates that individuals who abuse prescription opioids are 40 times more likely to abuse or be dependent on heroin. The CDC has even gone so far as to call prescription opioids the “strongest risk factor” for heroin abuse.

B. The Role of Distributors in the Pharmaceutical Supply Chain

72. Because of the inherent dangers of opioids and other controlled substances, these drugs are distributed through a sophisticated, closed distribution system. of controlled substances

73. A distributor is not entitled to be a passive observer, but rather, is required to

monitor, identify, halt, investigate, and report suspicious orders of controlled substances. 21 C.F.R. § 1301.74(b). Distributors are also required to know their customers and the communities they serve. As its own distributor, Walgreens’ “customers” were its own pharmacies, but it was still required to perform due diligence.

74. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency. *Id.* Other red flags may include, for example, “[o]rdering the same controlled substance from multiple distributors.” *Id.*

75. The Controlled Substances Act (“CSA”) and its implementing regulations create restrictions on the distribution of controlled substances. *See* 21 U.S.C. §§ 801–971; 21 C.F.R. § 1300–1321. The CSA authorizes the Drug Enforcement Administration (“DEA”) to establish a registration program for manufacturers, distributors, and dispensers of controlled substances. Any entity that seeks to become involved in the production or distribution of controlled substances, including Walgreens here, must first register with the DEA. 21 U.S.C. § 822; 21 C.F.R. § 1301.11.

76. Tennessee state law mirrors its federal counterpart in imposing a series of overlapping and complementary restrictions on the distribution of controlled substances. *See* Tenn. Code Ann. § 39-17-417(a)(2), (3), and (4); Tenn. Code Ann. § 39-17-427; Tenn. Code Ann. §§ 53-11-301–452; 21 U.S.C. §§ 801–971; 21 C.F.R. §§ 1300–21.

77. State law authorizes the Tennessee Board of Pharmacy to establish a registration program for manufacturers, distributors, and dispensers of controlled substances. Tenn. Code Ann. § 53-11-301; 21 C.F.R. § 1301 (regulation part implementing the CSA and giving DEA its authority).

78. Registrants are required to comply with all security requirements imposed under that statutory scheme, including the maintenance of “effective controls against diversion of

particular controlled substances into other than legitimate medical, scientific, and industrial channels.” Tenn. Code Ann. § 53-11-303; 21 U.S.C. § 823(b)(1). They must “design and operate a system to disclose to the registrant suspicious orders of controlled substances” and inform the Board of Pharmacy and the DEA of suspicious orders when discovered by the registrant. Tenn. Code Ann. § 53-10-312(c); 21 C.F.R. § 1301.74(b).

79. Suspicious orders include those of “unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.” Tenn. Code Ann. § 53-10-312(c); 21 C.F.R. § 1301.74(b). These criteria are disjunctive rather than all-inclusive. For example, if an order deviates substantially from a normal pattern, the size of the order does not matter, and the order should be reported as suspicious. Likewise, a wholesale distributor need not wait for a normal pattern to develop before determining whether an order is suspicious. The size of an order alone, regardless of whether it deviates from a normal pattern, is enough to trigger the distributor’s responsibility to report the order as suspicious. The determination of whether an order is suspicious depends not only on the ordering patterns of the customer, but also on the patterns of the entirety of the distributor’s customer base and the patterns throughout the relevant segment of the distributor industry.

80. In addition to reporting all suspicious orders, distributors must also stop shipment of any order that is flagged as suspicious and may only ship orders that are flagged as potentially suspicious if, after conducting due diligence, the distributor can determine that the order is not likely to be diverted into illegal channels. In other words, if, after investigating, the distributor has any remaining basis to suspect that a customer is engaged in diversion, it must deem the order suspicious, inform the DEA, and decline to ship the order.

81. Walgreens and all other registrants must likewise report acquisition and distribution

transactions to the DEA through its Automation of Reports and Consolidated Orders System (“ARCOS”) database. Tenn. Code Ann. § 53-10-312; 21 C.F.R. § 1304.33.34

C. DEA Guidance for Pharmaceutical Distributors

82. “Starting in 2005, the DEA held one-on-one meetings with distributors to remind them of their legal obligation to prevent pills from being diverted to the black market[.]”⁴ The DEA sent a letter to all registered distributors, including Walgreens, dated September 27, 2006, to reiterate the responsibilities of controlled substances distributors in view of the prescription drug abuse problem our nation currently faces. The letter emphasized that the distributors are “one of the key components of the distribution chain. If the closed system is to function properly . . . distributors must be vigilant in deciding whether a prospective customer can be trusted to deliver controlled substances only for lawful purposes. This responsibility is crucial, as . . . the illegal distribution of controlled substances has a substantial and detrimental effect on the health and general welfare of the American people.”

83. The DEA’s September 27, 2006, letter also warned that it would use its authority to revoke and suspend registrations when appropriate. The letter stated that a distributor, in addition to reporting suspicious orders, has a “statutory responsibility to exercise due diligence to avoid filling suspicious orders that might be diverted into other than legitimate medical, scientific, industrial channels.” The letter also stressed that “a distributor may not simply rely on the fact that the person placing the suspicious order is a DEA registrant and turn a blind eye to suspicious circumstances.”

84. On December 27, 2007, the DEA sent a second letter to all registered manufacturers

⁴ https://www.washingtonpost.com/national/congressional-report-drug-companies-dea-failed-to-stop-flow-of-millions-of-opioid-pills/2018/12/18/5bc750ee-0300-11e9-b6a9-0aa5c2fcc9e4_story.html?utm_term=.6b3e78381614.

and distributors, “to reiterate” that in addition to the general requirement to maintain effective controls against diversion, DEA regulations required all manufacturers and distributors to report “suspicious orders when discovered by the registrant.” The letter further explained:

Registrants are reminded that their responsibility does not end merely with the filing of a suspicious order report. Registrants must conduct an independent analysis of suspicious orders prior to completing a sale to determine whether the controlled substances are likely to be diverted from legitimate channels. Reporting an order as suspicious will not absolve the registrant of responsibility if the registrant knew, or should have known, that the controlled substances were being diverted.

....

[R]egistrants that routinely report suspicious orders, yet fill these orders without first determining that order is not being diverted into other than legitimate medical, scientific, and industrial channels, may be failing to maintain effective controls against diversion. Failure to maintain effective controls against diversion is inconsistent with the public interest as that term is used in 21 USC [§§] 823 and 824, and may result in the revocation of the registrant’s DEA Certificate of Registration.⁵

85. As a distributor, Walgreens was therefore legally required to: (i) monitor for and identify suspicious orders of controlled substances; (ii) report suspicious orders when discovered; and (iii) refuse to ship a suspicious order unless and until, through due diligence, Walgreens could determine that there were no red flags indicating the drugs were likely to be abused and diverted into illegal channels.

D. Industry Guidelines for Distributors

86. Longstanding industry compliance guidelines established by the Healthcare Distribution Management Association (“HDMA”), the trade association of pharmaceutical distributors, of which Walgreens is a member, explains that distributors are “[a]t the center of a sophisticated supply chain” and therefore “are uniquely situated to perform due diligence to help

⁵ ABDCMDL00269685–86 (emphasis added).

support the security of the controlled substances they deliver to their customers.”⁶ According to the HDMA, “[h]ealthcare distribution has never been just about delivery. It’s about getting the right medicines to the right patients at the right time, safely and efficiently.”⁷ In addition to legal obligations, the HDMA has recognized that, “[a]s a central part of the pharmaceutical supply chain, healthcare distributors have a ‘moral obligation’ to help combat the issue.”⁸

87. The guidelines set forth recommended steps in the due diligence process, and noted in particular:

If an order meets or exceeds a distributor’s threshold, as defined in the distributor’s monitoring system, or is otherwise characterized by the distributor as an order of interest, the distributor should not ship to the customer, in fulfillment of that order, any units of the specific drug code product as to which the order met or exceeded a threshold or as to which the order was otherwise characterized as an order of interest.⁹

88. In addition to all of the above, distributors, such as Walgreens, that had superior access to information about where opioids were going, how many opioids were ordered, and who was ordering them, and had the power to stop or limit shipments, had a duty as companies registered to do business and distribute controlled substances in Tennessee to ensure that opioids were not being diverted. As the HDMA itself has long recognized, distributors “have not only statutory and regulatory responsibilities to detect and prevent diversion of controlled prescription drugs, but undertake such efforts as responsible members of society.”¹⁰

⁶ HDMA Industry Compliance Guidelines: Reporting Suspicious Orders and Preventing Diversion of Controlled Substances, filed in *Cardinal Health, Inc. v. Holder*, No. 12-5061 (D.C. Cir. Mar. 7, 2012), Doc. No. 1362415 (App’x B at 1).

⁷ <http://www.hdma.net/about/role-of-distributors>.

⁸ ABC-MSAGC00000299.

⁹ HDMA Industry Compliance Guidelines: Reporting Suspicious Orders and Preventing Diversion of Controlled Substances, HDMA, at 9.

¹⁰ See Brief for HDMA and Nat’l Ass’n of Chain Drug Stores as *Amici Curiae* in Support of Neither Party, *Masters Pharm., Inc. v. U.S. Drug Enforcement Admin.*, 2016 WL 1321983, *3 (C.A.D.C. Apr. 4, 2016).

E. The Role of Pharmacies in the Pharmaceutical Supply Chain

89. Walgreens also failed to fulfill its legal obligations as a retail chain pharmacy dispensing opioids.

90. Pharmacies are the final, crucial step in the pharmaceutical supply chain before the drugs reach the consumer. Pharmacies purchase drugs from distributors, and after they take physical possession of the drugs, they are required to ensure safe storage of the controlled substances in their stores. Lastly, pharmacists review a consumer's prescriptions to ensure they are legally and medically legitimate before dispensing. This duty corresponds with a healthcare provider's obligation to prescribe medically legitimate prescriptions.

91. As with distributors, Tennessee state law and its federal counterpart impose a series of overlapping and complementary restrictions on the dispensing of controlled substances. State law authorizes the Tennessee Board of Pharmacy to establish a registration program for dispensers of controlled substances, like retail pharmacies. Tenn. Code Ann. § 53-11-301; 21 C.F.R. § 1301.

92. Registrants are required to comply with all security requirements imposed under that statutory scheme, including the maintenance of "effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels." Tenn. Code Ann. § 53-11-303; 21 U.S.C. § 823(b)(1).

93. Under Tennessee law, it is illegal for a pharmacist to dispense a controlled substance "for any purpose other than those authorized by and consistent with the person's professional or occupational licensure or registration law, or to . . . dispense any controlled substance in a manner prohibited by the person's professional or occupational licensure or registration law[.]" Tenn. Code Ann. § 53-11-401.

94. Tennessee and federal law require pharmacies to recognize and act upon red flags indicative of addiction, abuse, and diversion, which the DEA has described as:

- i. multiple customers receiving the same combination of prescriptions or drug cocktails;
- ii. multiple customers receiving the same strength of controlled substances, no individualized dosing, and/or multiple prescriptions for the strongest dose of an opioid available;
- iii. many customers paying cash for their controlled substance prescriptions;
- iv. customers requesting early refills for controlled substances;
- v. many customers with the same diagnosis codes written on their prescriptions;
- vi. customers driving long distances to visit physicians and/or fill prescriptions;
- vii. customers arriving in groups, with each customer presenting a prescription issued by the same physician; and
- viii. customers with prescriptions for opioids written by physicians with specialties not associated with pain management, such as podiatry or gynecology.

95. Under DEA regulations, “[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, *but a corresponding responsibility rests with the pharmacist who fills the prescription.*” 21 C.F.R. § 1306.04(a) (emphasis added).

96. Walgreens has long been aware of this duty, as shown in a January 2013 internal presentation:



Title 21 Code of Federal Regulations

Section 1306.04 Purpose of issue of prescription.

*(a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, **but a corresponding responsibility rests with the pharmacist who fills the prescription.** An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (**21 U.S.C. 829**) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.*

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97. Retail pharmacies like Walgreens act as the last gatekeeper for diversion and observe many of these red flags firsthand, and often in real time. A majority, if not all, of these red flags were present at Walgreens' Tennessee pharmacies that sold opioids, yet Walgreens failed to respond in any meaningful way.

F. Industry Guidelines for Pharmacies for Dispensing Controlled Substances

98. Walgreens failed to follow industry guidance for pharmacists dispensing opioids—guidance it helped create.

99. In March of 2015, “[a] coalition of stakeholder organizations released a consensus document representing the medical, pharmacist, and supply chain spectrum highlighting the challenges and ‘red flag’ warning signs related to prescribing and dispensing controlled substance prescriptions.”¹¹ These “stakeholder organizations” purported to be committed to working together to support appropriate prescribing, dispensing, access to, and use of controlled substance

¹¹ NABP, Stakeholders Release Consensus Document on the Challenges and “Red Flag” Warning Signs Related to Prescribing and Dispensing Controlled Substances, Pharmacy Times (Mar. 12, 2015), <https://www.pharmacytimes.com/view/nabp-stakeholders-release-consensus-document-on-the-challenges-and-red-flag-warning-signs-related-to-prescribing-and-dispensing-controlled-substances>.

prescription medications.¹²

100. Walgreens and the National Association of Chain Drug Stores were among the coalition of stakeholders that joined the consensus document.¹³

101. The 2015 consensus document noted that controlled substances can cause negative health consequences if they are abused, diverted, or used inappropriately and not as intended, and as a result, pharmacists had a specific legal “corresponding responsibility” to evaluate a prescription in the context of the patient’s broader medication need and history.

102. Per this consensus document that Walgreens joined, a pharmacist’s corresponding responsibilities include:

- *Recognizing “red flag” warnings that call the prescription into question.* Such warnings require the pharmacist to ensure that the prescription is being issued for a legitimate medical purpose by the prescriber acting in the usual course of his/her professional practice. This may include communicating with the prescriber to clarify the prescription and/or evaluate the legitimacy of a prescription[.]
- *Satisfactorily determining legitimacy of the prescription.* Communicating with prescribers can be essential in ascertaining the legitimacy of a controlled substance prescription, although simply phoning a prescriber and inquiring if the prescription is legitimate may not be satisfactory. *In the case of prescribers who may be involved in abuse or diversion, it is highly unlikely that the response to an inquiry from the pharmacist concerning the legitimacy of the prescription would be to affirm that the prescription is not legitimate.* Thus, the pharmacist may need to initiate additional means to evaluate the prescription.
- *Accessing Prescription Monitoring Program (“PMP”) data.* This step is valuable and necessary in many situations.

103. Adding to the DEA guidance, this 2015 consensus document included potential “red flags” that “may indicate that a controlled substance prescription is not being obtained for a

¹² *Id.* at 3.

¹³ Stakeholders’ Challenges and Red Flag Warning Sign Related to Prescribing and Dispensing Controlled Substances, <https://www.nacds.org/ceo/2015/0312/stakeholders.pdf>.

legitimate medical purpose, but for diversion or abuse, thereby possibly necessitating additional steps by the pharmacist.”¹⁴ These red flags include:

- Patients travel in groups and/or have unexplainable common factors in their relationships with each other, for example, groups of patients present prescriptions for the same controlled substances from the same prescriber, or multiple family members or patients living at the same address present similar controlled substance prescriptions to the pharmacy on the same day.
- Patient presents a prescription for controlled substance that the pharmacist knows, or reasonably believes, that another pharmacy refused to fill.
- Pharmacist becomes aware that prescriber’s DEA registration has been previously suspended or revoked, or is pending suspension or revocation.
- Patient’s statements and conduct suggest abuse of controlled substances, such as appearing sedated, confused, intoxicated, or exhibiting withdrawal symptoms.
- Patient obtains same or similar controlled substance prescription from multiple health care practitioners without disclosing those existing controlled substance prescriptions.
- Patient obtains controlled substance medications from one pharmacy while having received the same or similar controlled substance(s) from other pharmac(ies) without disclosing those existing controlled substance prescriptions.
- Patient presents prescriptions for highly abused controlled substances.
- Patient presents several prescriptions written for controlled and non-controlled substances, but only wants the controlled substance medication(s) dispensed.
- Patient presents prescriptions for *large quantities or large number* of prescriptions for controlled substances.
- *Patient presents prescriptions for highly abused “cocktails” (combination of opiate, benzodiazepine, and muscle relaxant) of controlled substance medications.*
- Patient presents prescription from prescriber who is prescribing outside the scope of his/her practice as defined by state law.

¹⁴ *Id.* at 13.

- Patient alters, forges, sells or rewrites prescriptions, or patient is diverting/selling medication, or getting drugs from others.¹⁵

G. Walgreens’ Distribution and Sale of Opioids in Tennessee

104. As both a distributor and a retail pharmacy chain, Walgreens was in a unique position with respect to its regulatory requirements, DEA guidance, and industry guidance.

105. This is because Walgreens distributed narcotics to itself. Indeed, from 2006 to 2014, Walgreens distributed approximately 652 million ODUs, equal to 9.2 billion MMEs—to its own pharmacies in Tennessee.¹⁶ This self-distribution was in addition to the opioids Walgreens purchased from third-party, secondary distributors, like Cardinal and Amerisource. Combined, Walgreens’ pharmacies in Tennessee purchased approximately 795 million ODUs during that eight-year period.

106. Walgreens was statutorily obligated to exercise due diligence to prevent diversion, including maintaining a suspicious order monitoring (“SOM”) system for identifying, halting, and reporting suspicious orders to the DEA at the time of discovery.

107. As both a distributor and a retail chain pharmacy, Walgreens knowingly and intentionally failed to implement an adequate SOM system to fulfill these responsibilities.

i. As a Distributor, Walgreens’ Method of Identifying and Reporting Suspicious Orders to the DEA was Insufficient.

108. From approximately the late 1990s through 2012, Walgreens used a simple, sized-based formula to identify and report “suspicious” orders at its Distribution Centers (“DCs”). Walgreens then included these orders on a “Suspicious Control Drug Order Report” that it submitted to the DEA on a monthly basis.

109. Walgreens’ Suspicious Control Drug Order Reports failed in two respects. First,

¹⁵ *Id.* at 12–15.

¹⁶ ARCOS.

the formulas Walgreens used to identify orders were improper under guiding regulations. Second, Walgreens' monthly reporting of identified orders was insufficient because Walgreens was still shipping suspicious orders rather than halting them.

110. Walgreens generated its Suspicious Control Drug Order Reports using two very similar formulas. Both formulas utilized an average number based on historical orders, applied a three-times multiplier to that number, and deemed orders as "suspicious" if they exceeded that number. The second formula, which was implemented in March 2007, only considered orders suspicious if they exceeded the threshold for *two months in a row*.

111. Both iterations of Walgreens' "three-times" formula were deficient because they failed to consider the pattern or frequency of orders.

112. Walgreens knew that these formulas were deficient and had significant guidance from the DEA on how to correct the problem. Specifically, the DEA audited Walgreens' Perrysburg, Ohio Distribution Center—the distribution center that served Walgreens' Tennessee pharmacies—in March 2006. During this audit, the DEA examined Walgreens' "three times" formula (called the "DEA factor" by Walgreens) and found that Walgreens' "suspicious ordering report is inadequate."

1301.74(b):

DEA feels that the suspicious ordering report is inadequate: they specifically did not like the DEA Factor and would like to know how we determine it. They would like a better description of the formula used to determine a suspicious order. The explanation of the formula is: All stores are put into groups of 25 based on the amount of daily prescriptions filled. The average is then taken from the orders to the DC on each group of 25. The result is Average order * DEA factor = trigger. They said the formula should be based on (Size, pattern, frequency).

113. Two months later, the DEA sent Walgreens a "Letter of Admonition" regarding its Perrysburg DC. Again, the DEA found that Walgreens' "formulation . . . for reporting suspicious ordering of controlled substances was insufficient" and that Walgreens' suspicious ordering

“formula should be based on (size, pattern, frequency).” The DEA further found that Walgreens’ “maintenance of purchase records was inadequate.” The DEA gave Walgreens 30 days to respond with its plan of action.

114. Despite the DEA’s clear mandate, Walgreens did not switch its formula until ten months later in March 2007, and even then, the revised formula was still based upon a simple multiple and failed to consider the pattern or frequency of orders.

115. In addition to knowingly using an improper formula, Walgreens was still shipping suspicious orders and any reports to the DEA were submitted after the fact—defeating the entire point of the system.

116. From at least 2007 through 2012, Walgreens simply generated a monthly Suspicious Control Drug Order Report of orders that had already been filled and shipped and sent the voluminous list of (fulfilled) suspicious orders to the DEA. The post-facto monthly reporting of *already-filled* orders directly contravened the regulatory requirement that suspicious orders be reported when discovered. 21 C.F.R. § 1301.74(b).

117. Besides printing and mailing the lengthy list, Walgreens admitted that it performed no meaningful due diligence on those suspicious orders before shipment.

118. Walgreens knew at the time that its protocols did not satisfy its regulatory obligations. In fact, the DEA told Walgreens as far back as 1988 that its reporting practices were insufficient. Specifically, the DEA stated that “a monthly printout of after-the-fact sales does not relieve [it] of the responsibility of reporting excessive or suspicious orders,” and that while “[a]n electronic data system may provide the means and mechanism for complying with the regulations,” that system would not be “complete until the data is carefully reviewed and monitored by the registrant.”

119. Later in 2008, an internal audit of Walgreens' Perrysburg DC concluded that the processing and reporting of suspicious controlled drug orders was one of the areas most in need of improvement. It further emphasized that Walgreens was required to report suspicious orders *upon discovery* to the DEA. Again, Walgreens was not permitted to wait until after the order had been shipped to report.

120. One problem with Walgreens' Suspicious Control Drug Order Report system was that it had no mechanism to monitor and investigate suspicious orders. Rather, its only purpose was to generate voluminous monthly printouts. It was not until March 2008 that Walgreens formed a five-department "team" to "beg[i]n creating" an actual SOM process for its distribution centers, a move made solely "in response to" the closures of multiple Cardinal facilities following a settlement with the DEA.

121. Walgreens did not launch a pilot of its new SOM program for over a year until August 2009, and even then, the pilot included orders from just seven stores. It took close to another year for the program to finally be rolled out chain wide.

122. Even once implemented, Walgreens' SOM system flagged orders that exceeded the threshold, but did nothing to reduce them. Walgreens changed this in September 2010 so that the SOM system finally began automatically reducing individual orders that exceeded certain thresholds. But even as revised in 2010, the system still did not pause or halt suspicious orders so that Walgreens could investigate the order.

123. While the revised SOM system procedure would limit individual orders, the system was still deficient in that it was not capable of tracking cumulative orders by a single store. Walgreens did not address this flaw until November 2012. Even as revised then, the system still did not halt or report these suspicious orders. Moreover, the system provided multiple warnings

to stores approaching or exceeding the ceiling, allowing them to strategically time orders to avoid hitting their limits.

124. The inability of Walgreens' SOM system to halt suspicious orders continued into November 2012, even as its Divisional Vice President of Pharmacy Services attended a meeting with the DEA. Following that meeting, this Vice President reported to his superior, the President of Pharmacy, Health, and Wellness, that the DEA had plainly instructed that "[i]f suspicious - you don't ship."

125. Just a few months prior in September 2012, Walgreens had received an immediate suspension order ("ISO") from the DEA, shutting down Walgreens' Jupiter, Florida, Distribution Center, and finding Walgreens' distribution practices constituted an "imminent danger to the public health and safety" and were "inconsistent with the public interest."

126. In the ISO, the DEA also made the following findings of fact and conclusions of law regarding Walgreens' SOM system—applicable across all of Walgreens' operations:

- Walgreens' Suspicious Control Drug "reports, consisting of nothing more than an aggregate of completed transactions, did not comply with the requirement to report suspicious orders as discovered, despite the title [Walgreens] attached to these reports."
- The report for "December 2011 appears to include suspicious orders placed by its customers for the past 6 months. The report for just suspicious orders of Schedule II drugs is 1712 pages and includes reports on approximately 836 pharmacies in more than a dozen states and Puerto Rico."
- "DEA's investigation of [Walgreens] . . . revealed that Walgreens failed to detect and report suspicious orders by its pharmacy customers, in violation of 21 C.F.R. §1301.74(b)."
- ". . . DEA investigation of [Walgreens'] distribution practices and policies . . . demonstrates that [Walgreens] has failed to maintain effective controls against the diversion of controlled substances into other than legitimate medical, scientific, and industrial channels, in violation of 21 U.S.C. § 823(b)(1) and (e)(1). [Walgreens] failed to conduct adequate due diligence of its retail stores, including but not limited to, the six stores identified above, and continued to distribute large amounts of controlled

substances to pharmacies that it knew or should have known were dispensing those controlled substances pursuant to prescriptions written for other than a legitimate medical purpose by practitioners acting outside the usual course of their professional practice. . . . [Walgreens has not] recognized and adequately reformed the systemic shortcomings discussed herein.”

- “[DEA’s] concerns with [Walgreens’] distribution practices are not limited to the six Walgreens pharmacies.”

127. These failures were not limited to the specific Jupiter, Florida, DC. Rather, the failures identified by the DEA above reflected systemic failures of Walgreens’ SOM system that impacted its distribution nationwide, including in Tennessee. Walgreens has admitted that the SOM systems and procedures at all of its DCs were the same.

128. Later, Walgreens confessed that the prior system failed to halt suspicious orders. Comparing the 2013 system to its predecessor, an Rx Integrity manager noted that the prior “system would continue to send additional product to the store *without limit or review* which made possible *the runaway growth of dispensing of products like Oxycodone*, that played a roll [sic] in the DEAs investigation of Walgreens.”

129. In February 2013, the DEA issued subpoenas and an Administrative Inspection Warrant for Walgreens’ Perrysburg DC—the one that supplied Walgreens’ Tennessee stores—that were similar to those issued to the Jupiter DC. Because the Perrysburg DC’s operation was practically identical to the one in Jupiter that had been shut down, Walgreens employees immediately made “contingency” plans in preparation for the Perrysburg DC being shut down by the DEA.

130. Shortly after receiving the subpoenas and warrant, Walgreens reached out to the DEA through its attorney, stating that Walgreens would “voluntarily discontinue distribution of controlled substances from the Perrysburg facility” in order to “eliminate any immediate need for further DEA administrative action” regarding the Perrysburg DC.

131. To resolve the investigations into the operation of Walgreens' distribution centers, Walgreens eventually agreed to what was at the time the largest distributor settlement in DEA history—\$80 million—to resolve allegations that it committed an unprecedented number of recordkeeping and dispensing violations of the CSA, including failure to maintain a system to detect and prevent the abuse and diversion of prescription opioids such as oxycodone and hydrocodone. The 2013 settlement resolved CSA violations in Florida, New York, Michigan, and Colorado, ones which resulted in the diversion of millions of opioids into illicit channels, including up the I-75 corridor into Tennessee.

132. The DEA found that Walgreens' Jupiter DC failed to comply with DEA regulations that required it to report to the DEA suspicious drug orders that Walgreens received from its retail pharmacies, resulting in at least tens of thousands of violations, particularly concerning massive volumes of prescription opioids. There, the DEA stated:

Notwithstanding the ample guidance available, Walgreens has failed to maintain an adequate suspicious order reporting system and as a result, has ignored readily identifiable orders and ordering patterns that, based on the information available throughout the Walgreens Corporation, should have been obvious signs of diversion occurring at [its] customer pharmacies.

133. As part of the settlement, Walgreens had to enhance its training and compliance programs, and to cease compensating its pharmacists based on the volume of prescriptions it filled, including ones for controlled substances.

ii. Walgreens' Newly Implemented SOM Systems Were Rendered Ineffectual Because of Numerous Loopholes.

134. Even once Walgreens implemented a new SOM system, it was underfunded, poorly overseen, and easily circumvented.

135. As a clear indication of Walgreens' lack of interest in fulfilling its duty as a distributor and retail pharmacy, Walgreens assigned just *five* people to Rx Integrity—the new in-

house group specifically in charge of reviewing suspicious orders. This tiny team was responsible for reviewing the hundreds of thousands of orders placed by thousands of Walgreens' pharmacies across the country, in real time.

136. Even at its height, Rx Integrity only employed *eleven* people to oversee its SOM program.

137. In a January 4, 2013 email, one employee noted that the orders the team was able to investigate that day were “a week old,” and in most cases had already been shipped— still in violation of the requirement to report suspicious orders when discovered. Responding to an inquiry about workload, the employee explained that “[a]s we decrease the upper limit of ceiling more, the number of stores/workload will be increased. We can control the workload by how much we decrease the ceiling value at any given time.”

138. In other words, Rx Integrity was not properly staffed to review the flagged orders, so the department “control[led] the workload” by slowing the rate that they lowered limits on the volume of the stores' orders for controlled substances.

139. But Walgreens' new SOM system was also easily circumvented.

140. For example, in the first few years of the program, it did not include orders that its stores placed to third-party, secondary distributors, like Cardinal. Stores could therefore place orders for opioids from other distributors to avoid ceilings imposed by Walgreens' SOM program. Likewise, the SOM analysis also excluded what were termed “pretty darn quick” (or “PDQ”) orders from Walgreens' internal network. Walgreens could even remove a store from the SOM system entirely. These obvious flaws rendered the new SOM system largely ineffectual.

141. Another notable gap in Walgreens' SOM process was the practice of “inter-storing,” where a Walgreens pharmacy that hit its ordering limit could borrow controlled

substances from other nearby Walgreens pharmacies. This would allow a store to obtain additional volumes of opioids beyond Walgreens' own generous limits without having to report the inter-store transfer to the DEA as required, while also keeping its third-party distributors in the dark as to a store's actual usage.

142. Walgreens utilized and endorsed inter-storing. In December 2012, after the DEA forced Walgreens to implement stricter order limits on controlled substances, internal documents show Walgreens expressly acknowledged that inter-storing would increase. Worse, its Rx Integrity Department did not have a method of monitoring inter-storing until mid to late 2013, meaning that the department charged with identifying and reporting SOM had no visibility into inter-storing.

143. Walgreens' Tennessee pharmacies were no exception to the practice of inter-storing. For example, in June 2013, Store 5064 in Gallatin had exceeded Cardinal's six-week maximum allotment of hydrocodone, complaining that it "[couldn't] interstore enough to complete the partial fills [it] had already promised." To avoid this limit, it used the inter-storing process to obtain even more hydrocodone. At the time, Store 5064 had ordered 25,500 hydrocodone tablets from Cardinal in just six weeks, yet it still had to borrow from neighboring stores to keep up with demand.

144. While inter-storing involved the actual unreported transfer of opioids between stores, Walgreens' pharmacies also worked around ordering ceilings by sending patients to nearby stores, which had the effect of rendering Walgreens' SOM system meaningless. Rather than take steps to quell this practice, Walgreens actively encouraged it in Tennessee.

145. For example, in July 2013, a pharmacist at Store 6853 in Nashville expressed concern that she was "run[ning] out for her patients due to other locations being out of the

medication and sending their patients to her store.” Walgreens did not question *why* the demand for opioids was so high in the area, or why the other stores were beyond the ordering limits. Instead, Rx Integrity simply instructed the concerned store to fill out a Controlled Substance Override (“CSO”) form to request an increase in its controlled substance order ceilings. It also *recommended* that the “busier stores” (i.e., those over their limits) “do the same.”

146. In a similar example in August 2013, Store 3798 on Broadway in Knoxville, Tennessee, was struggling to feed the demand for oxycodone. Walgreens personnel requested to increase Store 3798’s oxycodone supply because “[S]tore 5373 which is only a few miles away [also on Broadway], reached their ceiling as well which caused some of their patients to go to 3798.”


147. Again, Walgreens’ Rx Integrity division did not investigate the growing opioid demand in the area. Rather, both pharmacies were instructed to fill out CSO forms to request an increase in their oxycodone ceilings—not based upon a finding of a legitimate need, but to “better reflect their sales.” Surprisingly, when Store 5373 attempted to justify its need for an increase, it pointed to *other* stores being out of stock. The request for a ceiling increase was granted 30 minutes later, suggesting that little to no due diligence was performed, which is unsurprising given corporate directives and the fact that less than a dozen compliance employees were tasked with reviewing all of these requests nationwide.

148. Store 3798 continued struggling to meet its oxycodone and morphine demand into February 2015, claiming that it was out of those two drugs “all the time.” Rx Integrity’s response was the same as always: “[C]omplete a CSO form for each Item to have your ceiling allotment increased.”

149. The approval of these CSO forms was particularly alarming because for years,

Walgreens' internal policy expressly stated that increased sales and lack of stock are invalid reasons to request additional drugs.

Reviewing Store CSO Responses

Example of an invalid CSO response for additional product: 

Reason

Reason:

Provide a detailed explanation of this request including Rx sales history, 13-week item movement, current on-hand count, inventory adjustments, etc.:

- ☐ Buyout/Acquisition
- ☐ Emergency Situation
- ☒ Change in Sales Trend
- ☐ Store Type (on-site, hospice, specialty, etc.)
- ☐ Other

Increase in pharmacy sales ←


Reason

Reason:

Provide a detailed explanation of this request including Rx sales history, 13-week item movement, current on-hand count, inventory adjustments, etc.:

- ☐ Buyout/Acquisition
- ☒ Emergency Situation
- ☐ Change in Sales Trend
- ☐ Store Type (on-site, hospice, specialty, etc.)
- ☐ Other

none in stock update counts



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150. Walgreens' practice of shifting patients from stores that had exceeded their opioid ordering limits to stores with remaining capacity occurred across the State. For example, patients were being shifted between Store 5474 in Cookeville and Store 6223 in Crossville, two cities that lie just under an hour away from each other in between Nashville and Knoxville. In April 2014, Store 5474 complained that Store 6223 was "always over the ceiling limits." As a result, Store 5474 was "getting a lot of percocet and oxycodone scripts from Crossville because they can't get medications in." Rather than looking into why Store 6223 was "always over the ceiling limits," Walgreens instructed Store 5474—which only needed more opioids because of problems with a

neighboring store—to fill out the paperwork to ask for a ceiling increase from Amerisource. In other words, Walgreens knowingly facilitated circumventing the order limit on Store 6223 in Crossville by increasing the limit for Store 5474 in Cookeville, which had the direct effect of releasing more opioids into the area.

151. The only action Walgreens took with respect to Store 6223—the one that was “always over [its] ceiling limits”—was helping it *also* avoid Amerisource’s ceilings. At the time, Amerisource had been flagging numerous suspicious oxycodone and morphine orders from Store 6223. Rather than investigate these flagged orders (or the related orders being shifted to Store 5474 in Cookeville), Walgreens asked Amerisource to allow Store 6223 to order *more* of the product based solely on “their sales.”

152. In response, Amerisource provided Walgreens with helpful tips on placing orders with Amerisource so that Store 6223 could prevent the orders from being “kill[ed].” This was despite the fact that that Store 6223 had submitted orders that Amerisource flagged as suspicious just the prior month.

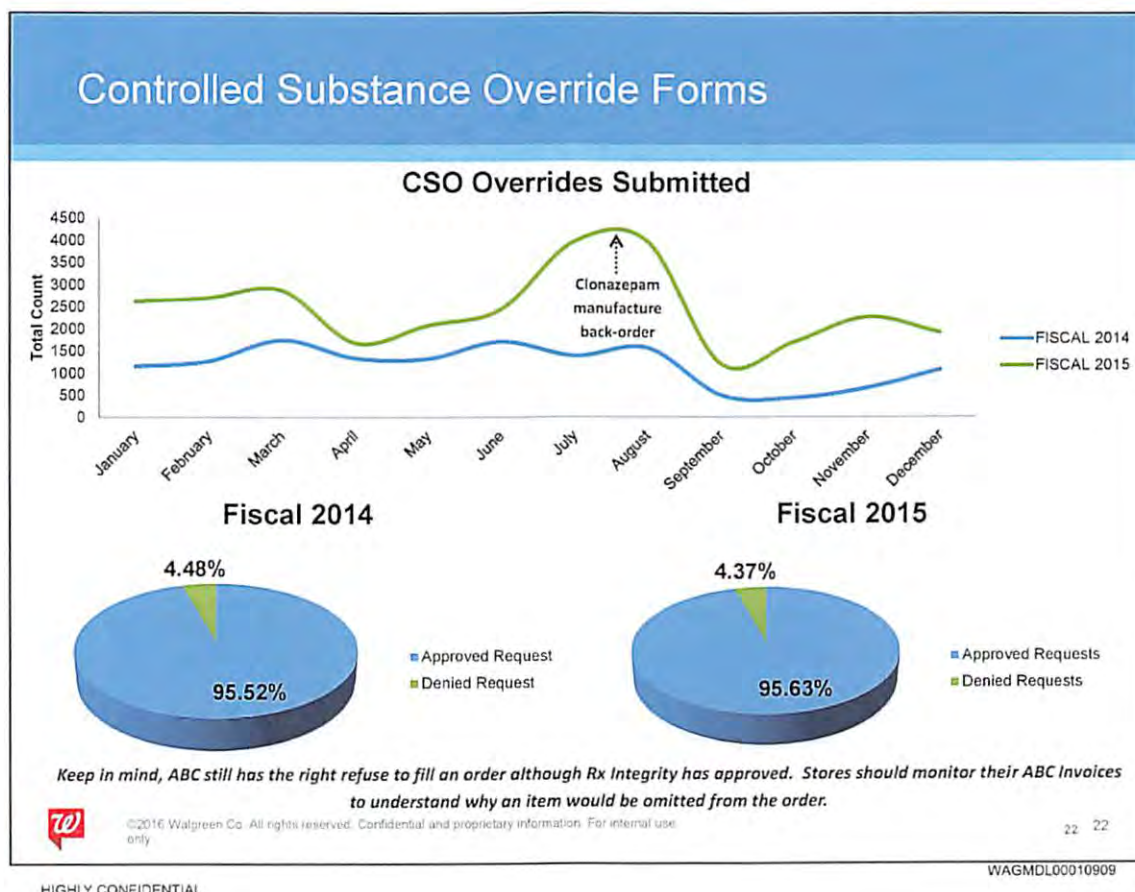
153. Two weeks later, Store 6223 was still placing suspicious orders for oxycodone and morphine that were being flagged by Amerisource.

154. Thanks to Walgreens’ efforts to increase and evade ordering limits, Store 6223 continued dispensing 50,000 hydrocodone and oxycodone pills every month without pause for at least the next *six years*.

iii. Walgreens Failed to Effectively Implement or Monitor Its SOM Policies.

155. Even as Walgreens’ SOM policies evolved, they were crippled by Walgreens’ failure to meaningfully enforce them. As mentioned above, Walgreens allowed stores to fill out Controlled Substance Override (“CSO”) forms to request an increase in their controlled substance order ceilings. While the use of CSOs purported to moderate opioid ordering, it was in fact a

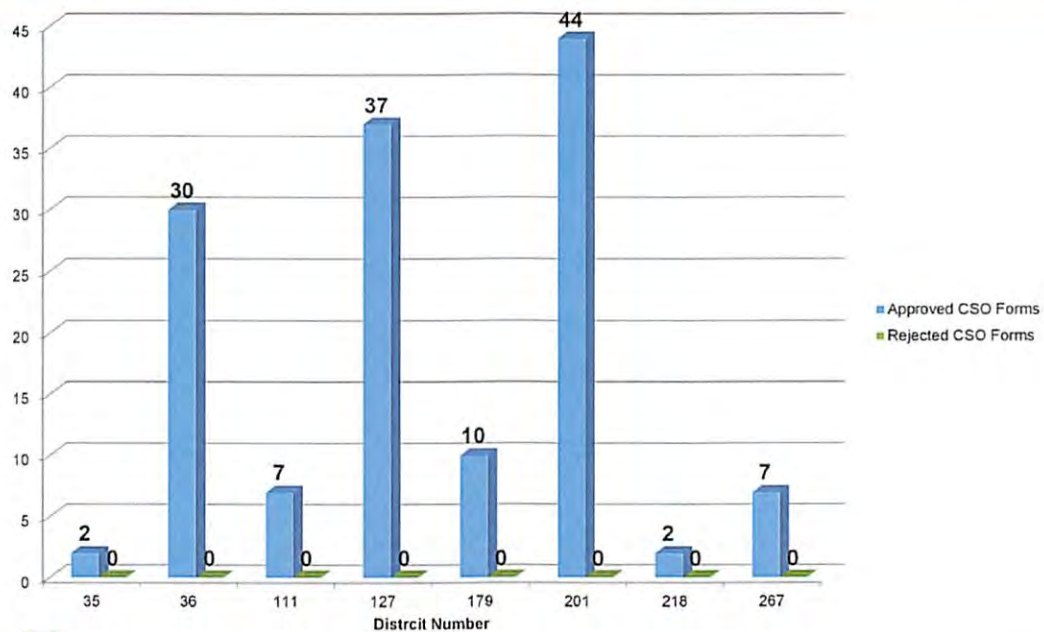
rubber stamp. In fact, Rx Integrity approved all but 5% of CSOs in 2014 and 2015.



156. Nowhere can this be seen more clearly than in Walgreens’ Rx Integrity review of prescriptions in Tennessee (“Market 27”) from a February 6, 2014 internal presentation.

157. In 2013, Walgreens’ Tennessee stores submitted 139 CSO forms seeking to override the established controlled substance limits. Not a single request was denied.

Market 27: Submitted CSO Override forms in 2013



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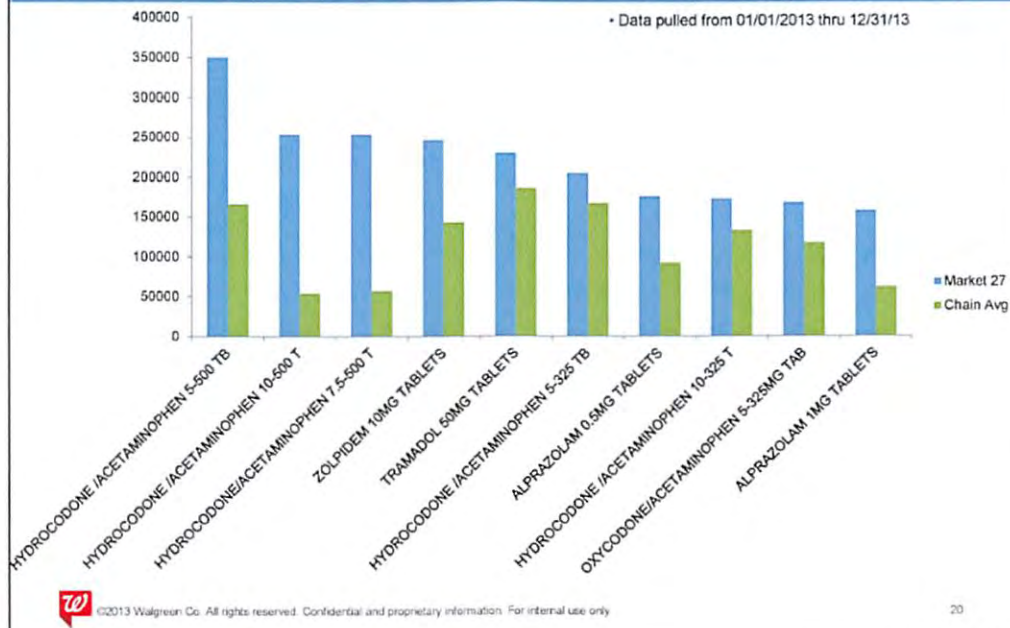
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158. Walgreens was approving these overrides even though its Tennessee stores were dispensing hydrocodone at 3–5 times above the national averages. Moreover, orders from Walgreens' Tennessee stores were being flagged between 50% and 385% *more* often than Walgreens' national average.

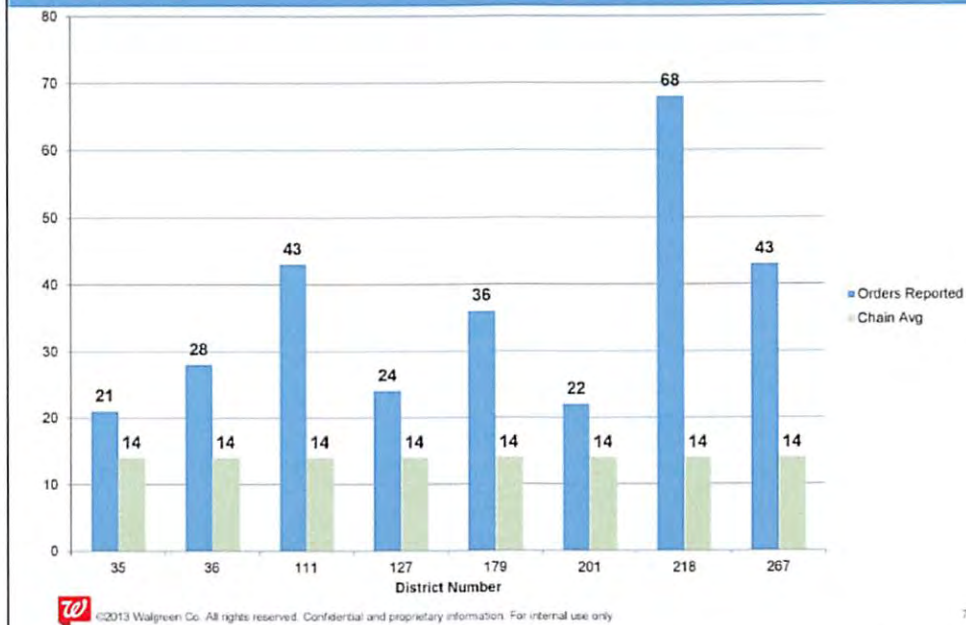
Market 27: Top 10 Dispensed Controls by Script Count



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Market 27: Reported Orders of 2013





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WAGMDL00108829

159. Walgreens' lax policy on analyzing CSO requests was plainly evident at stores in Tennessee.

160. For example, in August 2013, Store 3137 in Memphis, Tennessee,¹⁷ was running low on its supply of oxycodone. At the time, Store 3137 was dispensing approximately 10,000 oxycodone 10mg pills every week. When this proved to be too little to meet demand, the Store requested an increase in its ceiling with this explanation: "We did not receive any oxycodone 10/325 tabs again, we are getting about 20 bottles every other week, and our pharmacy requires 20 per week to take care of our patients." Although Walgreens' internal policy stated that *demand alone* is not a justification for increasing the ceiling, Rx Integrity approved a CSO request for 2,000 more oxycodone pills for Store 3137 based on an increase in sales.

Example of an invalid CSO response for additional product: 

Reason
Reason:
Provide a detailed explanation of this request including Rx sales history, 13-week item movement, current on-hand count, inventory adjustments, etc.:
Buyout/Acquisition Emergency Situation * Change in Sales Trend Store Type (on-site, hospice, specialty, etc.) Other Increase in pharmacy sales 

161. In another example in 2013, Store 7049 in Greeneville, Tennessee, was hitting Cardinal's order limit at 14,000 tablets of hydrocodone every six weeks. Rx Integrity first assisted in having another 2,000 hydrocodone pills shipped to the store from a Walgreens' Anderson distribution center. The only justification given as to why Store 7049 needed more hydrocodone was that the store was "the only 24[-]hour store and gets many hospital ER prescriptions . . . in a large trade area." The population of Greeneville, Tennessee, is approximately 15,000. Notably,

¹⁷ This was just one store; Walgreens currently operates 77 stores in Shelby County.

in 2013, Store 7049 was among the top-15 Walgreens' pharmacies in Tennessee with respect to hydrocodone in 2013, dispensing over 600,000 pills that year. In yet another example of oversupply, this would have been enough to give all 15,000 residents of Greeneville at the time 40 doses of opioids.

162. Yet, the Rx Integrity department went beyond just providing thousands of additional hydrocodone pills. It also worked to increase Cardinal's six-week limit for the Store by 50% from 14,000 every six weeks to 21,000. Rx Integrity made clear that even this was not the actual limit, though. Instead, "[i]f for *any reason* the store still is not receiving enough product [Rx Integrity] can re-evaluate the allotment limits. There should not be *any issues* with receiving adequate product as the Anderson DC has plenty in-stock." The Store responded, "Thank you for helping us 'LOVE CUSTOMERS' and 'BUILD TRUST' at this location!!"

163. While the Store and management may have been thrilled, Rx Integrity apparently knew that Store 7049's dispensing volume was suspect, writing: "Should send this over to [the Director of Rx Integrity.]"

164. Walgreens even coached its stores on how to artificially increase their ordering capacity and circumvent Walgreens' SOM program. Store 13659 in Jackson—a top opioid-dispensing Walgreens store in Tennessee—was dispensing 4,500 to 5,500 hydrocodone pills per week,¹⁸ but was hitting Walgreens' SOM ordering limits.¹⁹ Based upon the volume "they can sell," Rx Integrity increased the Store's ordering limit for hydrocodone 25% from 24,000 pills in six weeks to 30,000. However, more troubling is the fact that Rx Integrity detailed *exactly* how

¹⁸ This was not the first time Store 13659 was over its hydrocodone ordering limits. In December 2012, it went around Walgreens' SOM by "borrowing" from nearby Store 11600, also in Jackson. Underscoring the gaps in Walgreens' SOM system at the time, Store 13659 asked Store 11600 to order six extra bottles from Amerisource that would then be "interstore[d]" to Store 13659.

Store 13659 could manipulate Walgreens' SOM system to artificially increase its ordering limits "if the store is not receiving enough product":²⁰

I reviewed the last few months of sales and the store typically sells around 4500-5500 Hydrocodone 7.5/325 per week. Assuming they can sell around 6000 tabs weekly, their current limit should allow for this at 24,000 for 6 week period. I went and increased the ceiling to 30,000 but if the store is not receiving enough product since they are turning away scripts and SIMS does not recognize this in regular orders, the store should use the ceiling tool and order a few bottles if the tool directs them on RX Quick order or they may need to place a CSO request occasionally to ensure they continue to receive enough product. Eventually sales will reflect in SIMS and should order appropriately.

165. Walgreens' use of sales to determine store limits without conducting any due diligence was not only insufficient; it was devastating to the Jackson community. Store 13659, the same as above, was one of the primary Walgreens filling prescriptions from Nurse Practitioner Jeffrey Young in Jackson. The prescribing habits of NP Young eventually generated "complaints from the public stating that their family members were seeing Jeff and were now addicts."

166. Walgreens eventually stopped filling his prescriptions in June 2017 after his practice was raided by local law enforcement, DEA, TBI, and FBI on January 11, 2017. Rx Integrity attempted to characterize their decision to stop as a proactive measure, despite the fact that Walgreens' pharmacists had "been having problems" with NP Young "for years" and despite the fact that Rx Integrity had been notified about the raid months earlier in April 2017. However, even in 2017, Walgreens elected not to put an electronic "hard block" in Walgreens' system for NP Young's prescriptions, forcing individual pharmacists to be "responsible for identifying the prescription and informing the patient that Walgreens will no longer be filling controlled substance prescriptions for [NP] Young."

iv. When Walgreens Stopped Self-Distributing Opioids, It Took Deliberate Action to Avoid the Oversight of Outside Vendors.

167. In April 2013, after the DEA Settlement, Walgreens elected to stop distributing

²⁰ Emphasis added.

controlled substances, such as opioids, from its Perrysburg Distribution Center.

168. As part of this process, Walgreens strengthened its relationship with Cardinal, and other third-party distributors, to provide opioids and other CII to its stores.

169. Due to its own troubles with the DEA, Cardinal had begun imposing stricter opioid ordering limits on Walgreens, which resulted in it canceling an increased number of CII orders from Walgreens' pharmacies. Because this affected the pipeline of opioids into Walgreens' stores, Rx Integrity investigated the increase in cancellations.

170. In one instance, Rx Integrity reviewed 19 orders that Cardinal had canceled on January 22, 2013 and determined that these orders contained "nothing remarkable." Three of the "unremarkable" orders were from small towns in Tennessee: for OxyContin from Store 10959 in Jamestown; for Lortab from Store 6465 in Bartlett; and alprazolam from Store 7540 in Cleveland.

171. In response to the increasing number of CII orders being canceled, Walgreens' Rx Integrity and Cardinal's Quality and Regulatory Affairs ("QRA")—the two departments tasked with identifying suspicious orders at these respective companies—met to discuss the situation.

172. At the meeting, Cardinal informed Walgreens that Cardinal had classified 370 of Walgreen's stores as "red." Of these 370 red stores, 44 were in Tennessee—*more than any other state*.

173. Cardinal did not bestow the red classification on these 370 stores arbitrarily or without reason. Each of these stores had been identified as "not pass[ing] [Cardinal's] objective assessment and have monthly average purchase of Oxycodone above 5k or Hydrocodone above 10K." This was a dramatic increase from the four stores that Cardinal had originally classified as red.

174. Cardinal's red designation was more than a warning—it meant that beginning

March 4, 2013, the red stores would no longer receive opioid shipments until the store had undergone significant investigation, surveillance, and monitoring by Cardinal's QRA.

Designation	Summary of Designation	Status on March 4 th	Threshold Limits	Follow-up Required
Red	Stores that do not pass the objective assessment and have monthly average purchases of Oxycodone above 5K or Hydrocodone above 10K.	No narcotic analgesic shipments. All non-narcotic analgesic products will be shipped up to threshold limit.	Narcotic analgesic threshold limits at 1 and threshold limit setting methodology applied for non-narcotic analgesic drug families.	QRA or surveillance site visit, depending on the zone.

175. Walgreens' Divisional Vice President for Wholesale Purchasing summarized his call with Cardinal ("CAH"), complaining that he believed Walgreens was being unfairly targeted.²¹

Just got off a call with CAH. They now say the number of Perrysburg stores that they won't deliver product to went from 4 to about 300. These will require surveillance visits and surveys before they will ship a single bottle! They will plan to visit these asap however. The call this afternoon will cover these stores and the go-forward plan..

I asked if they have received the Hydrocodone data from all of their customers, and they said that they have from the independents (which they probably already had as they service most of the independents needs)...They stated that they don't think they got the Hydrocodone data from the other chains yet but they are in talks with them to get that data... (Sounds like we were singled out a bit in my opinion and I don't think it's fair to not treat all customers the same)...

176. Rather than address the red flags, Walgreens continued to freely supply these stores from its own Perrysburg DC, while planning how other distributors could "pick up a lot of [the] slack" at these red stores.

177. Walgreens was also concerned that Cardinal would begin reporting the orders placed by these 370 stores, including the 44 in Tennessee, to the DEA, so Walgreens began "systematically blocking [opioid] orders from getting to Cardinal for these stores."

178. Walgreens then began coaching its pharmacists for Cardinal's due diligence investigation, in part by providing this advice on what pharmacists should and should not say:

Only answer questions you or the [pharmacy manager] are asked, *do not give more information unless asked. Treat it like a court room.* Do Not [sic] use buzz words

²¹ Emphasis added.

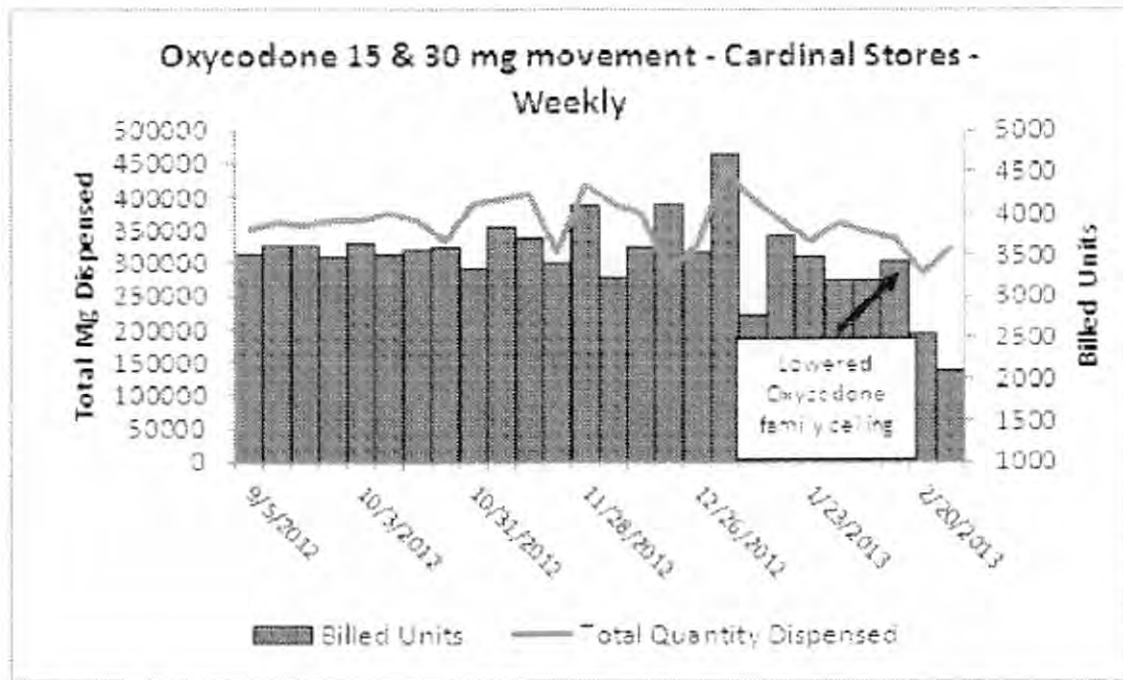
like , [sic] *abusers, my patients want to pay cash*, or my patients always want the Watson brand.²²

179. Notably, the types of questions the Cardinal investigators asked were centered on Walgreens' controlled substance dispensing policies and on detecting standard red flags for abuse and diversion, such as, who were the top prescribers of highly abused opioids and whether the pharmacist felt that the controlled substance being prescribed was appropriate for the patient:

1. Who are your top prescribing physicians for the oxycodone/methadone/controlled substances?
2. Are the prescriptions for oxycodone/methadone/controlled substances being utilized by the same patients on a recurring basis or are there different patients each month?
3. What are the medical conditions of the patients to whom oxycodone/methadone/controlled substances is being dispensed?
4. Does the pharmacy receive patient diagnosis and/or treatment plan information from the physicians prescribing oxycodone/methadone/controlled substances as well as receiving that information from the patient?
5. If the answer to Question 4 is yes, is that information maintained in written form by the pharmacist?
6. Is the pharmacist satisfied that oxycodone/methadone/controlled substances is the appropriate product for treating the identified medical conditions and/or consistent with the treatment plans for each patient receiving that item?

180. While Cardinal began its due diligence site visits in late February and early March 2013, Walgreens was busying itself with determining how Cardinal's SOM policies were affecting the "movement" of oxycodone 15 and 30mg, clearly concerned with the decrease in the volume of "billed units."

²² Emphasis added.



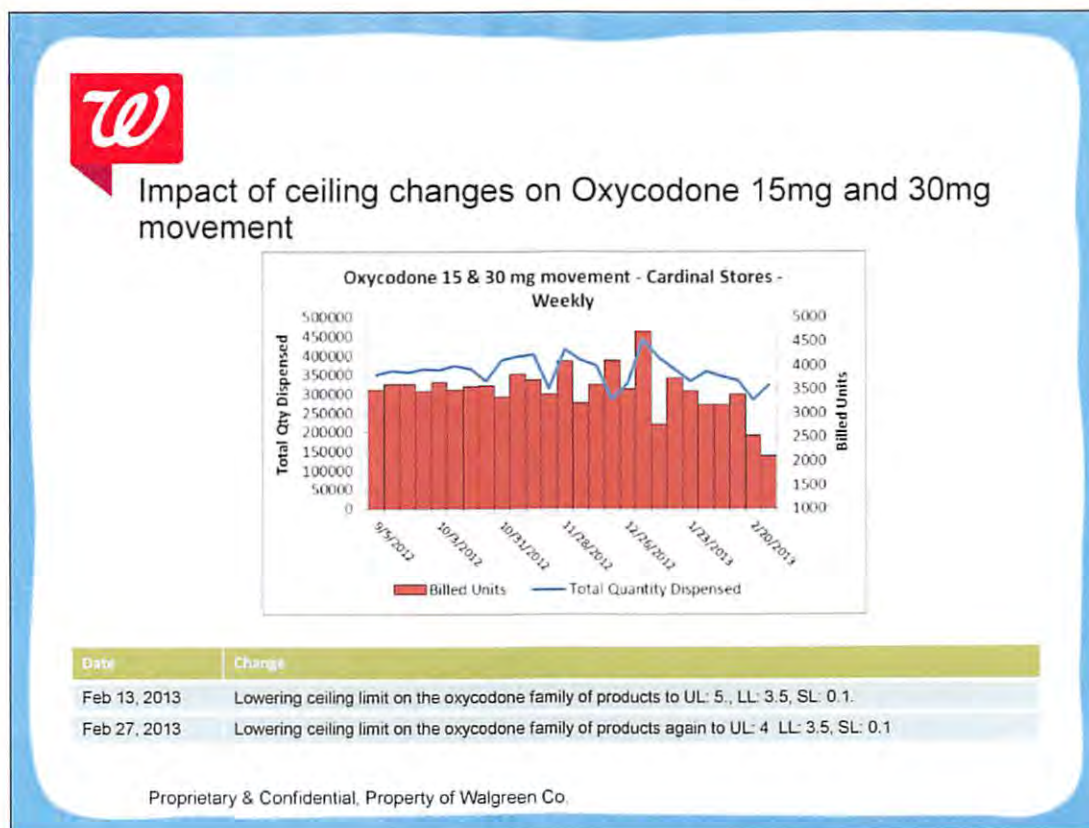
181. By March 20, 2013, Cardinal had completed initial review of the 370 red stores, redesignating 118 of them as “green.” However, Walgreens was still left with over 250 stores in red status with Cardinal, which was problematic because starting April 1, it was no longer distributing controlled substances from its own Perrysburg DC. This created the possibility that “if these [red] stores are not cleared by Cardinal by that date, they will no longer receive any narcotic pain medications.” In Tennessee, 33 Walgreens stores retained their red classifications.

182. Walgreens’ Divisional Vice President of Pharmacy Services became concerned that Cardinal was not being “aggressive at resolving these [red] stores.” As a result, he directed “that [Walgreens] explore the possibility of moving these remaining stores into [Amerisource].”

183. Walgreens’ solution to ensuring its red stores continued receiving the desired volume of opioids was to switch to Amerisource, who would not ask questions. Walgreens and Amerisource had previously agreed to begin switching some of its Perrysburg-supplied stores to Amerisource beginning April 25, 2013. This month-long transition was called the “Amerisource

Perrysburg Accelerated C2 Plan.” In advance of that upcoming date, Walgreens provided Amerisource with initial key information, such as points-of-contact, on March 25, 2013. No mention was made about the “red” store situation.

184. However, on the same day that Walgreens was laying initial groundwork for its “accelerated” plan, it was still focused on the impact of Cardinal’s tightened approach to order thresholds on the “movement” of oxycodone through its stores.



185. Just two days after the above slide was prepared, Walgreens pushed Amerisource to *immediately* pick up 225 of its stores from Cardinal.²³ Amerisource internally referred to this jokingly as the “C2 Accelerated Accelerated Perrysburg Plan!” A senior director of Amerisource’s compliance division immediately became concerned with this “hyper-accelerated” transition:

²³ ABDCMDL00309948.

Jim,

Can we discuss these accounts when you get an opportunity? I'm concerned that these are the high risk accounts that CAH wants to dump ASAP so I want to make sure we have them sized properly and get the correct thresholds set.

186. Seventeen of the Tennessee red stores were included in the “accelerated accelerated” plan and began receiving opioids from Amerisource on April 9, with another six moving to Amerisource on April 16. Moreover, Walgreens sought to transition all of its top-10 opioid volume stores in the country, three of which were in Hamilton County, Tennessee—Store 3537 in East Ridge was *the highest* in the country, with Store 3536 in Hixson in third, and Store 3535 in Chattanooga in eighth. Store 3537 even received a Letter of Admonition from the DEA in July of 2018 concerning its “record-keeping deficiencies” for controlled substances. The store “failed to maintain on a current basis a complete and accurate record of each controlled substance received, sold, delivered, or otherwise disposed of, [which constituted] a violation of 21 U.S.C. 842(a)(5).”

187. In fact, Walgreens sought to transition the vast majority of its stores to Amerisource, starting with the remaining 224 red stores:

ABC Rollout

227	4 9 - 224 Red stores and 3 Hospice stores
1	4 10 Tentative - 1 Hospice in Woodland
43	4 16 Tentative - 43 FL Stores
1,278	4 16
1,192	4 23
1,200	4 30
1,124	5 7
111	TBD
124	Already being serviced
5,300	Total Stores

188. To prepare for the transition from Cardinal to Amerisource, Walgreens’ Rx

Integrity department began internally discussing what message would be provided to pharmacists. Its message made no mention of surveillance because Rx Integrity “didn’t get the impression [Amerisource] would be doing [surveillance] based on our discussion last week.”

189. In other words, Walgreens operated with the understanding that Amerisource accepted hundreds of the stores that Cardinal had designated as red stores based upon their opioid ordering history, and that Amerisource did not intend to perform surveillance.

190. As the relationship between Walgreens and Amerisource grew, Walgreens continued to transition any red stores from Cardinal to Amerisource into May 2013.²⁴

Here is the most recent red store list from Cardinal. I was told that the bottom 10 stores are restricted from purchasing any controlled substances. Pam is also providing me a schedule of store inspections, which I will forward to you upon receipt.

Just want to understand how I can help your team.. I'm assuming that we want to see if we can move stores to ABC as soon as possible if Cardinal refuses to provide them with controlled substances? If so, I'll start examining the contract and reaching out to ABC to get a timeline from them.

191. Moreover, despite the fact that Amerisource had been supplying opioids to Walgreens’ red stores since April 9, 2013, the two entities were still making *initial* attempts to sort out standard operating procedures and “work stream[s]” more than twenty days later.

192. In fact, the parties did not anticipate the “establish[ment] [of] a relationship between WAG and [Amerisource’s] OMP [(Order Monitoring Program)] team” until April 30, 2013, and they would not begin reviewing controlled substance thresholds data until May 10, 2013. Their joint goals were to prevent suspicious order reports to the DEA, avoid “service disruptions,” and “handle the store volume.”

²⁴ Emphasis added.

Issues & Risks

ID	Description	Impact	Owner
1	Review ABC's order monitoring process (OMP) and their DEA reporting process.	Controlled substance orders that are approved by Walgreens could reported as suspicious orders by ABC.	Polster & Dymon
2	Review ABC controlled substance threshold limits and how the limits correlate to WAG limits.	Service disruptions could occur if WAG limits do not correlate to ABC limits or vice versa.	Polster & Bratton
3	Create a reporting structure between ABC and Rx Integrity.	A direct reporting structure is needed to handle the store volume that ABC will experience.	Polster & Dymon
4	Create a new process for emergency C-II and controlled substance ordering.	Sail coordinators process emergency C-II and controlled substance orders for the stores, a new method will be needed in conjunction with CSOS.	Polster & Dymon

193. A year later in 2014, Walgreens and Amerisource continued to ensure that their SOM programs worked together to avoid reporting suspicious orders to the DEA. Specifically, Amerisource sent Walgreens detailed breakdowns of its threshold data on a weekly basis in 2014. The DEA had previously instructed distributors not to divulge thresholds to customers or indicate how close they were because it “would allow customers to circumvent the system and not get reported to DEA as suspicious.”²⁵

194. On April 8, 2014, the director of Amerisource’s compliance division sent Walgreens an email with the attachment “WAG Orders Held,” which read:

Team WAG,

Find attached some data that I believe could be the basis for a part of our discussion. Briefly, the first tab is all WAG locations that had CII order lines flagged by the omp, sorted largest (most lines) to smallest. We can discuss further tomorrow. Thanks.

Ed Hazewski
Director, Corporate Security and Regulatory Affairs
AmerisourceBergen Corporation

²⁵ ABDCMDL00285348-49.

195. The attached spreadsheet showed that 11 Tennessee Walgreens pharmacies had placed 508 orders that were over their thresholds. Of those, 57% had been rejected and Amerisource coded every single one as an administrative error as opposed to a suspicious order, meaning that none were reported to DEA. The approved orders allowed almost a quarter of a million ODUs that were over Walgreens' thresholds to be shipped into Tennessee. Some of those Walgreens pharmacies had exceeded their thresholds by almost 50%.

196. Several months later, on November 21, 2014, Amerisource again sent Walgreens one of its routine "Weekly OMP Statistics" emails. After the report had been sent, Amerisource discussed the report internally. An Amerisource Diversion Control Coordinator responded, "Walgreen's [sic] orders from this morning were mostly way over threshold or duplicates. I'm not sure how much that column [(rejected or approved)] will change to be honest."²⁶ In response, an Amerisource Corporate Investigator stated:

*I agree that action needs to be taken on WAG's part to make sure they do not order large amounts over threshold. However, I also agree with [the Diversion Control Coordinator], in that there won't be much change. Their solution will be to raise the threshold, which means I'll continue to receive many reviews on a daily basis. I've talked with all the WAG investigators regarding CII orders being reduced, with no success at this point.*²⁷

197. Walgreens also requested that orders submitted by their pharmacies to Amerisource that were over the threshold be cancelled by Amerisource and not reviewed any further. This circumvention of the OMP would allow Walgreens to place potentially suspicious orders without the risk of being reported to the DEA, since Amerisource was only required to report orders it identified as suspicious, which only occurred after Amerisource further reviewed an order.

198. In 2013, Walgreens originally entered a ten-year supply agreement with

²⁶ ABDCMDL00306524.

²⁷ ABDCMDL00306523 (emphasis added).

Amerisource, and by 2017, Walgreens accounted for 30% of Amerisource's revenue.

199. Walgreens eventually obtained an approximately 28% ownership interest in Amerisource, although it recently sold 6 million shares for \$900 million, reducing its ownership to approximately 25%.²⁸

200. Before selling any of its ownership in Amerisource, Walgreens voted to defeat a movement by a coalition of Amerisource shareholders to obtain greater transparency from Amerisource's Board related to the "governance measures the Company has implemented since 2012 to more effectively monitor and manage financial and reputational risks related to the opioid crisis in the U.S."²⁹

201. Thus, Walgreens used its stake in Amerisource to limit transparency into steps Amerisource has taken to get a handle on its opioid distribution, which would include its opioid distribution policies related to Walgreens. This further underscores Walgreens' efforts to avoid accountability for its unlawful opioid sales.

v. Walgreens' Controlled Substance Dispensing Policies Were Flawed and Inconsistently Enforced, If at All.

202. As discussed above, Walgreens formed the Rx Integrity group following the 2013 settlement with the DEA to remedy its prior failures in complying with the SOM obligations.

203. This small group of five to eleven people, in addition to monitoring suspicious orders, was *also* tasked with enhancing and monitoring Walgreens' dispensing practices. Again, these employees were responsible for the thousands of Walgreens stores across the country.

204. This "enhanced" policy would replace the then-existing "Good Faith Dispensing" ("GFD") policy which was in place from 2006 to 2012.

²⁸ <https://www.walgreensbootsalliance.com/news-media/press-releases/2022/walgreens-boots-alliance-sells-six-million-shares-amerisourcebergen>.

²⁹ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2018/sisterstfrancisetal011118-14a8.pdf>.

205. The original GFD policy did little to fulfill Walgreens' obligation as a retail pharmacy chain to dispense controlled substances lawfully. Even when a pharmacist believed a prescription could not be filled in good faith, say, for example, if the pharmacist knew the prescriber had been criminally indicted for their opioid prescribing, they were required to contact the prescriber and, if the prescriber confirmed the prescription was valid, to "process the prescription as normal." Predictably, this was a recipe for disaster.

206. The original GFD guidelines also required pharmacists to examine suspicious prescriptions on a "prescription by prescription basis."

207. This policy prohibited pharmacists from contextualizing prescriptions from the same doctor to see prescribing trends. Moreover, the policy effectively instructed pharmacists to ignore strong evidence of diversion or abuse at the provider, clinic, or practice group level. This includes uniform or near uniform diagnoses, pattern prescribing, and other typical red flags for diversion.

208. When Walgreens eventually updated its GFD policy as part of the DEA settlement, it admitted internally that it had been blindly relying upon prescribers, even though it knew the prescriber might have been assisting or participating in abuse and diversion. Walgreens plainly admitted that its GFD policy "did not go far enough."

In June we re-launched our Good Faith Dispensing policy. However, we have learned more about DEA's expectations around GFD and we felt the steps we were taking with GFD did not go far enough. The game has changed; we can no longer rely on the "I spoke to the prescriber and he said it was okay." This is especially true when the prescriber may be assisting the patient to inappropriately use controlled substances. We are going down a different path now and we have to make sure that we are prepared.


209. Walgreens also developed a new "Target Drug Good Faith Dispensing" ("TDGFD") policy meant to "put teeth around GFD for high-risk products," such as oxycodone and hydrocodone.

210. As part of its development of TDGFD in January 2013, Walgreens implemented

test pilots in three high-volume, problematic opioid markets across the country. Tennessee was one of the three markets chosen, and the first store selected for the pilot was in Knoxville.



211. The policy was intended to “reduc[e] the abuse of pain medications in our communities” and was mandatory when filling any controlled-substance prescription.



Good Faith Dispensing (GFD)

- The pharmacist **must** use the elements of Good Faith Dispensing in conjunction with state and federal controlled substance laws when filling **all** prescriptions.
- A **corresponding responsibility** rests with the pharmacist to ensure that controlled substance prescriptions are issued for a legitimate medical purpose by an individual practitioner in the usual course of professional practice.
- Any pharmacist who **fails** to meet his/her “corresponding responsibility” obligation when dispensing a prescription for a controlled substance, or does not follow the validation procedures is subject to disciplinary action up to and including termination of employment.

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212. One key aspect of the Tennessee-based TDGFD pilot was the introduction of quantity limits for individual opioid prescriptions—60 units per order if paid in cash and 120 units if paid by insurance, and no partial fills to try and circumvent this.

TD GFD Parameters Checklist	
Patient Name: _____	Date: __/__/__
Rx # _____	
<p>Do not fill for quantities greater than what is listed below.</p> <p>Any prescription presented with larger quantities must be returned to the patient with the following statement: "I am sorry, Walgreens no longer fills for the quantity indicated on this prescription."</p> <p>Note: Do not fill the prescription for a reduced quantity</p> <p>Return prescription to patient, do not deface prescription</p> <p>Complete the checklist</p> <p>Quantity is 60 units or less + cash or discount card <input type="checkbox"/></p> <p>Quantity 120 units or less for third party <input type="checkbox"/></p>	

213. Walgreens intended to introduce the policy “in the Tennessee market and monitor impact,” however, it never rolled out this version of TDGFD across the rest of the State.

214. Instead, Walgreens created an entirely new “National Target Drug Good Faith Dispensing” program that abandoned the pill limits contained in the Tennessee-version of TDGFD. In other words, Walgreens developed a system that would materially limit the flow of opioids through its stores and into the State of Tennessee, tested the system in Knoxville, and then *decided* not to implement it.

215. The national TDGFD policy required filling out a checklist when the pharmacy dispensed any of the covered high-risk drugs. The pharmacist had to ensure the patient had (i) a valid government ID, (ii) no prior GFD refusal for this prescription, and (iii) if available in the state, a Prescription Drug Monitoring Program database had been reviewed, printed, and attached to the prescription.

216. The pharmacist also had to consider whether: the patient had received this prescription from Walgreens before, the prescription is from the same prescriber as the previous fill, the patient or prescriber address is proximal geographically, the prescription is being filled on time, the patient is paying in cash, chronic prescription use can be explained and supported, and the patient appears intoxicated. However even this checklist did not ensure due diligence into prescriber practices and red flags.

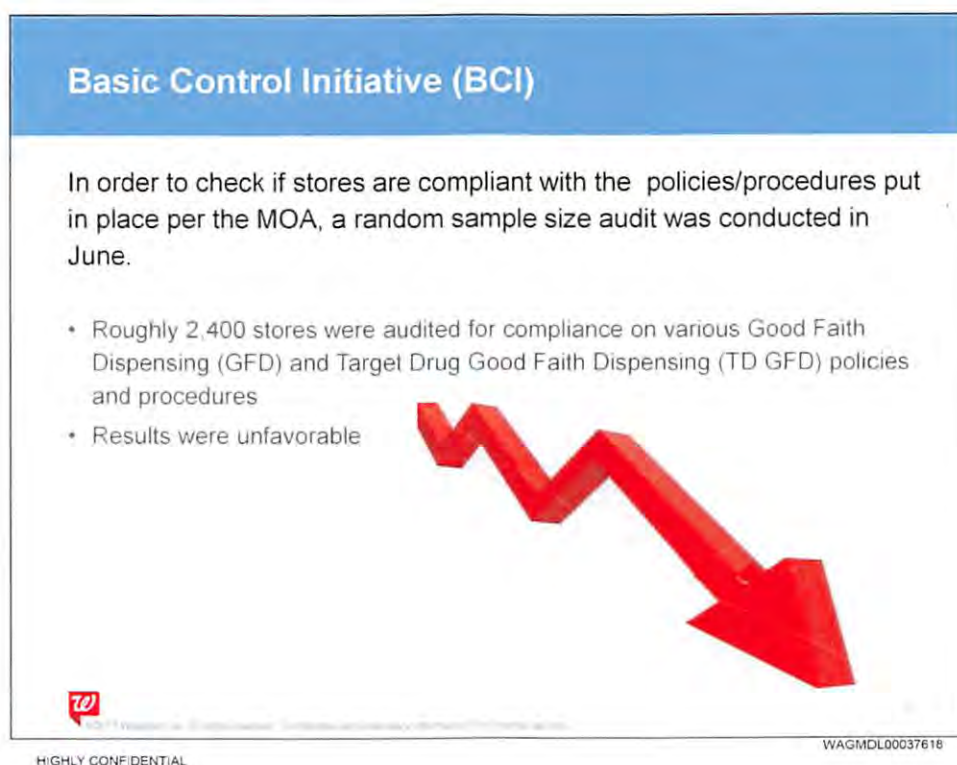
217. But like the GFD policy before it, the “National” TDGFD policy was undercut and rendered useless by Walgreens’ failure to actually monitor and enforce the policy. In fact, Walgreens did not have any method to determine if pharmacists were actually following TDGFD for nearly two years, until the end of 2014. Not only that, Walgreens had no processes in place for disciplining those pharmacists who were not in compliance.

218. For instance, in April 2014—before Walgreens implemented a policy to monitor TDGFD compliance—the District Pharmacy Supervisor for north Nashville reported to Rx

Integrity that a pharmacist in Clarksville had “stopped doing” the TDGFD checklist entirely for six months from September 2013 until March 2014.

219. The District Pharmacy Supervisor had no idea how to handle the revelation and had to ask corporate “what level of discipline this warrants” and whether a “precedent ha[d] been set.”

220. Walgreens’ TDGFD compliance did not improve over time. In 2015, Walgreens audited 2,405 of its stores on the pharmacists’ TDGFD performance “to check if [the] stores [were] compliant with the policies/procedures put in place per the [DEA] MOA,” namely the TDGFD. The results were, as Walgreens called it, “unfavorable.”



221. Forty percent of stores audited were not complying with the TDGFD when dispensing opioids. Moreover, of the 2,405 stores audited, 80% refused fewer than five controlled substance prescriptions for all of 2015, and 48% did not refuse *any*.

222. When the Senior Director of Pharmaceutical Integrity, Natasha Polster, reported

the dismal audit results, she told her team that they needed to “put [their] seat belts on” and “get a mitigation plan together.” Yet no such plan came to fruition.

223. Pharmacist noncompliance with TDGFD was also common in Tennessee. For example, in a 2013 internal survey, multiple Tennessee stores reported that they had never refused to fill a prescription for a particular prescriber. One pharmacy in Athens, Tennessee, even reported that it had filled prescriptions for a pain clinic in Maryville, approximately an hour’s drive away.

224. In that same 2013 survey, a pharmacist in Alcoa, Tennessee, reported that when it came to prescriptions from a particular prescriber, they were not satisfied “that the control items are the appropriate products for treating identified medical conditions and/or consistent with the treatment plans for each patient receiving such item,” explaining, “[l]ots of immediate release oxycodone with no controlled release and large quantities. Same diagnosis code for all patients.” Nevertheless, per Walgreens’ policy, the same pharmacist reported that they had only refused a prescription for a particular practitioner “[i]f the practitioner refused to speak to [them] about pts or could not be reached.”

225. The most concerning aspect of Walgreens’ TDGFD policy was that it seemed engineered to *pressure* its pharmacists to fill opioid prescriptions. Although Walgreens internally stated that “[t]he decision to dispense a prescription is ultimately up to the pharmacist,” it did not give those pharmacists leeway to actually use their professional judgment or create their own policies. This was especially the case because it reinforced Walgreens’ policy of making pharmacists review prescriptions on a script-by-script basis.

226. In 2013, Ms. Polster wrote in a draft presentation that pharmacies were *not allowed* to have store-level policies and that pharmacists were obligated to help patients find local inventory of opioids at other stores.

Pharmacist Responsibilities

- Review every script on an individual basis
 - No store policies
 - » Examples
 - Have to live within xx miles
 - Has to be for less than xx number of pills
 - No more decisions made solely on in-stock availability
 - » No “I am saving for my regulars”
 - » No “I am out of stock” without providing solutions
 - » No “I cannot call other stores”
 - Treat every customer with same level of service we would treat a non-controlled prescription customer
 - Review every script per GFD and TD-GFD policy



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227. Ms. Polster further pushed the position that “[t]here are legitimate reasons why customers might need these products . . . most prescriptions for [opioids] *will be for legitimate medical conditions and not used for diversion.*”³⁰

228. Notably, when the presentation was finalized, some of the language had been softened from prohibiting stores from maintaining store-level policies, to stating that “[t]here are no company policies.” Even so, pharmacists remained obligated to help patients locate available opioid inventory at nearby stores.

³⁰ Emphasis added.

Pharmacist Responsibilities

- There are no company policies regarding proximity or quantity
Examples:
 - Have to live within xx miles...
 - Has to be for less than xx number of pills...
- Pharmacy staff should not lean on in-stock availability to refuse prescriptions:
 - » No "I am saving for my regulars"
 - » No "I am out of stock" without providing solutions
 - » No "I cannot call other stores"
- If in-stock levels are not sufficient to service customers, the Ceiling Limits Tool should be used to request additional product
- Treat every customer with same level of service we would treat a non-controlled prescription customer



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229. Ms. Polster also made clear that red flags are not actually a reason to stop filling a prescription—they are simply “a pause.” Pharmacists must make “best effort[s] to attempt to resolve any concern,” and Ms. Polster even suggested that red flags could be resolved by having “a conversation with the patient.”

Pharmacist Responsibilities

- Treat every customer the same and eliminate pre-determined biases
 - 'Blanket' refusals are not acceptable
 - All refusals should be based on unresolvable red flags
 - » All resolved red flags need to be clearly documented
 - » The presence of one unresolved red flag shouldn't necessarily result in a refused prescription
 - » A red flag is not a hard stop, it should be a pause for the pharmacist to attempt to resolve their concern
 - » Pharmacists must make best effort to attempt to resolve any concerns
 - For example if a prescriber can't be reached (past office hours) use all other available resources to try and resolve the red flag(s)
 - Proximity concerns between patient/prescriber/pharmacy might be easily explained
 - Have a conversation with the patient or caregiver to gain information



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230. Rx Integrity's view that TDGFD was a policy for *pushing* pharmacists to fill opioid prescriptions can be clearly seen in the "Market 27 (Tennessee): Rx Integrity Presentation" from February 6, 2014, in which Rx Integrity asked "leadership" to review customer complaints to identify pharmacies that were "taking the easy way out" on filling opioid prescriptions:

What can Leadership do?

- Are stores complacent about controlled substance Out Of Stocks?
- Dig into Patient Complaints around GFD > Are stores taking the easy way out by being out of stock to avoid steps needed to fill a controlled substance prescription?
- Review the ceiling limits tool with your stores. Emphasize on the importance of using ABC PassPort to check in-stock conditions.



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231. Rx Integrity's dislike of the "easy way out," expressed above and elsewhere, ensured that Tennessee stores had full stocks of narcotics and high sales volumes, and contributed to widespread abuse and diversion in the state.

232. For example, Dr. Charles Morgan was a solo family practitioner located McMinnville, Tennessee. He was initially disciplined by the Board of Medical Examiners in 2004 for his controlled substance prescribing and his license was put on probation for five years.

233. In 2015, after all of the other local pharmacies had refused to continue filling Dr. Morgan's opioid prescriptions, Walgreens received an ominous warning about Dr. Morgan on October 3, 2015, when the pharmacist at Store 07075 in McMinnville emailed his manager to report a litany of red flags that could only indicate one thing—Dr. Morgan was operating a pill mill. Because of this, the pharmacist requested that the pharmacy be allowed to refuse to fill Dr. Morgan's prescriptions.

John,

Here's what we've gathered so far on Charles Dwight Morgan, NPI 1497834188, DEA # BM4137940. Please forward to whomever can make the call (probably Gene Hoover but maybe Dr. Mudd can do so).

- 1) He was paid a visit by the DEA a few months ago.
- 2) McMinnville Drug Ctr was just audited and understood it was primarily due to his prescriptions.
- 3) Currently NO pharmacy in the county (Fred's, Walmart, Sullivans, Kroger, or Webb's) will accept new patients from his office due to allocation concerns. McMinnville Drug Center and Rite Aid have given their patients a month to find new pharmacies and then will no longer fill any prescriptions from him.
- 4) McMinnville Drug Center became concerned when they received scripts from his office while they knew he was hospitalized. Apparently this coincided with his change in signature from something that just resembled a check mark to an actual signature accompanied by a stamp of said signature. Several of the pharmacies are concerned that it is the office staff, not Dr. Morgan, writing & signing the scripts.
- 5) He has started including diagnosis codes on his scripts but they are often odd- while his practice is listed with the DEA as "FAMILY PRACTICE OBSTETRICS", he has started putting "cancer" as the diagnosis for many of his patients but they are being given high dose hydro/apap with no addl therapy from himself or anyone else. This has been noticed here as well as other pharmacies with patients becoming defensive when addressed. As another example, the office has put back pain on script but the patient says they are being treated for migraines. Even on non-controls we are noticing oddities- prescriptions off market for years, such as a precursor to EpiPens, and another patient being prescribed insulin and diabetic supplies without diabetes, but rather for weight loss. We also have had repeated occurrences of him writing non-controlled medications that the patients are allergic to, but we cannot get ahold of the office to get them changed. We also have had nonsensical directions on scripts (ie, Nexium four times daily) but, again, cannot get ahold of the office to clarify.
- 6) Patients have complained at multiple pharmacies that they are paying \$60 per controlled script but cannot get anyone to fill them.
- 7) Other pharmacies have noted he is prescribing controls for patients currently serving jail time.
- 8) McMinnville Drug brought to our attention that he has patients routinely in his parking lot from 8 different counties.
- 9) We have not been able to speak to him on the phone. It's always a staff member, mostly his wife Angela who is very belligerent and antagonistic. Charles at McMinnville Drug Ctr was able to get him on the phone. The gist of the conversation was Charles' trying to get him to acknowledge several of these concerns but Dr. Morgan was also belligerent and antagonistic and threatened a lawsuit if Charles' & McMinnville Drug Ctr stopped filling his scripts.
- 10) Many of the patients that are presenting at this time are asking for their insurance to be bypassed and are willing to pay high cash prices. We checked the CSMD on several and they were too early. With the flood of close to forty patients at the same time

yesterday, we began simply explaining that we would pass our allocation limits [we've been restricted on benzodiazepines repeatedly (meaning we've run out) and hydro/apap has been close to out or just out when we get our weekly order repeatedly]. We normally have a half dozen different meds at or over our allocation limit in the RX Integrity site.

11) It's been recommended for us to pay a visit to the office, but to be honest, I would not be comfortable being in that environment at all.

12) We had numerous GFD refusals back during the spring when he began rotating oxy/apap, hydro/apap with a month supply of each but written every 2 weeks with either the patient stating he was changing the med or a note on the script stating it was okay to fill due to change of therapy. The CSMD would show a repeated pattern on these patients.

13) We've had several other pharmacies mention and have refused several of these ourselves, where he prescribes a patient with no prior history Norco 10/325, four times daily and gives them several scripts at the same time predated (which adds to confusion of whether he's in office or not).

I believe we are far past any reasonable concerns with this office and believe that we as WBA need to take steps to insulate ourselves from the practice. We've been told repeatedly to follow GFD practices and just to rely on that, but I firmly believe this practice is a danger to the community and needs to be blocked across the board from any WBA pharmacy. I fear some of these will be filled in those 8 counties that do not understand the situation with this prescriber.

Thank you,
G Brandon Potter,
RXM 07075

234. Notably, the email also indicated that the pharmacist and manager had had previous discussions concerning Dr. Morgan.

235. The pharmacist's concerns regarding Dr. Morgan eventually made their way to Austin Mudd, the Area Healthcare Supervisor, who wrote the following to Rx Integrity:

From: Mudd, Austin
Sent: Monday, October 12, 2015 11:51 AM
To: RxIntegrity
Subject: RR: GFD Diagnosis Question

RxIntegrity,

What are your recommendations when it comes to appropriate GFD practice for:

1. MD who writes diagnosis code on the prescription, yet the patient confirms that it is incorrect, for multiple patients; eg diagnosis is for back pain, but patient say migraines?
2. When pharmacy attempts to call MD office, they never get MD and the MD's wife is very antagonistic towards the staff, including threats of lawsuit if we do not fill?
3. MD office is a "Family Practice Obstetrics" yet writes controls that are outside of their general practice; eg cancer, high dose pain med combinations?
4. When other pharmacies in the greater area location of the MD practice are no longer filling for the doctor as a whole due to the above instances?

The prescriber of the above instances is Charles Dwight Morgan, NPI 1497834188, DEA # BM4137940 out of McMinnville, TN.

My current counsel is to continue individualized patient care and assessment for GFD and no blanket refusals for the MD, but can we use past instances as reasons against future fills?

Thanks in advance for guidance,
Austin

236. Notably, this watered-down email excluded key facts contained in the original red flag email, such as Dr. Morgan prescribing controlled substances for patients currently serving jail time, patients asking to pay cash in order to bypass insurance restrictions and to fill early, throngs of patients all presenting at the same time with similar or identical prescriptions, and patients routinely coming from at least eight counties to see Dr. Morgan.

237. Importantly, Mr. Mudd's email omitted the fact that the pharmacist expressed that they would not even be comfortable conducting a site visit at Dr. Morgan's practice and the fact that the pharmacists believed the situation was "far past any reasonable concerns with this office and . . . [Walgreens] need[s] to take steps to insulate ourselves from the practice." Finally, the pharmacists warned that they "fear[ed] some of these [prescriptions] will be filled in those 8 counties that do not understand the situation with the prescriber."

238. Despite these concerns, Rx Integrity rejected the request to allow the pharmacy to refuse Dr. Morgan's prescriptions. Instead, Rx Integrity "add[ed] a comment to follow GFD on [Dr. Morgan's] prescriber record." Additionally, a Walgreens Area Healthcare Supervisor

“counsel[ed]” the local pharmacist about “stay[ing] the course,” even going so far as to suggest that a blanket refusal would cause the pharmacist “liability.” Internally, Walgreens’ Area Healthcare Supervisor criticized the pharmacist as just “**want[ing] the easy way out.**”³¹

239. As a result of Rx Integrity’s decision, a total of 36 Walgreens pharmacies spread across seventeen counties in Tennessee continued filling more and more of Dr. Morgan’s prescriptions.

240. The pharmacist’s concerns about Dr. Morgan’s prescribing behavior, raised in October 2015, proved well-founded. In March 2017, Dr. Morgan was disciplined by the Tennessee Board of Medical Examiners for his prescribing pattern with respect to narcotics and other controlled substances. Dr. Morgan’s Agreed Order with the Tennessee Board of Medical Examiners noted that Dr. Morgan’s medical providers had said that he “suffered from serious cognitive deficits likely due to vascular dementia.”

vi. Walgreens Intentionally Implemented Ineffective, Poorly Enforced Dispensing Policies.

241. Walgreens often internally discussed strengthening its policies but chose not to take steps to curb the flow of opioids into Tennessee.

242. For example, in December 2012, the then President of Pharmacy, Health and Wellness provided the following “perspective” at a Walgreens divisional meeting:

³¹ Emphasis added.

Date: December 17, 2012
To: Eastern Division Market Pharmacy Directors
Cc: Debbie Platts
From: Jessica Puckett-Beasley
Subject: Eastern Division Strategy Meeting, Boston



- Kermit's Perspective
 - Control substance issue is a huge problem for reputation with customers, MDs, etc...financial (\$300M in fines possible)
 - Pilots have problems
 - Solution is to stop filling certain script: Oxycontin written for more than XXX quantity or more than XXX sig, will result in rejected RX
 - This is a md issue but we have to regulate it

243. In March 2013, the Director of Rx Integrity similarly recommended that Walgreens take strong action.

- | |
|---|
| 10. What Leadership can do: *stand behind your pharmacist if they refuse to fill a script. A "good" customer that has been at their store month after month is not necessarily a "good" customer. |
| 11. WARNING about cocktail drugs – big red flag for the DEA. DO NOT FILL... |

244. Despite these clear internal statements, Walgreens' Rx Integrity department never formally recommended or incorporated a "DO NOT FILL" or similar policy for "cocktail drugs."

245. Even though no formal policy was adopted with regard to "cocktail drugs," when the DEA became involved, the Rx Integrity quickly scrambled to make it *appear* like Walgreens had such a policy.

246. For example, in July 2013, Walgreens learned that "the feds [were] concerned" with two pain management doctors. In response, Rx Integrity recommended that its pharmacies reject cocktail prescriptions from those prescribers, claiming that such prescriptions "did not meet[] our GFD guidelines," even though Walgreens regularly filled cocktail prescriptions across Tennessee. The Director of Pharmaceutical Integrity continued, "There is not clinical proof that a cocktail works *other than to [enhance] the opiate.*"

247. Despite there being "no clinical proof" that the cocktail served any purpose other than drug abuse, Walgreens ignored countless red flags of abuse and diversion and maintained

policies that allowed it pharmacies to continuously fill “holy trinity” prescriptions for patients at truly shocking frequencies and quantities.

248. Rx Integrity’s complacency in keeping Walgreens’ Tennessee stores flush with opioids can be seen through the stores’ ordering histories and high-volume prescribers across the State whose controlled substance prescriptions Walgreens freely filled.

249. One such store was 5828 in Kingsport, Tennessee, which had been flagged by Cardinal as a “red” store in February 2013. Even after it was transitioned to Amerisource, Store 5828’s oxycodone dispensing was still problematic. For instance, in May 2014 Rx Integrity asked Amerisource to review Store 5828’s oxycodone thresholds for an increase because it anticipated dispensing 76,000 oxycodone each month, specifically including 7,000 Oxy 30.

250. Walgreens’ Rx Integrity department did not question or attempt to slow Store 5828’s rampant distribution of oxycodone pills to the city of Kingsport, with a population of roughly 50,000, but rather “helped” the store obtain a limit increase and told the store that it would likely need to request another limit increase “in the future,” which turned out to be only five months later.

251. In October 2014, Store 5828 was not simply over its new oxycodone limit, it was over the limit of “many, many” frequently abused drugs:

OXYCODONE HCL 30MG TAB (KVK) +100	Over Allocation Limit
METHYLPHENIDATE ER 54MG+TB(WT)100	Over Allocation Limit
HYDROC-APAP 7.5-325+O/S(LVT)473ML	Over Allocation Limit
HYDROCOD-APAP 7.5-325 TB(ACT)+500	Over Allocation Limit
OXYCOD-APAP 10-325 TAB (ACT) +100	Over Allocation Limit
GUAIAIUSSIN AC SYRP (HT) +473ML	Over Allocation Limit
OPANA ER 20MG TAB 60	Over Allocation Limit
OPANA ER 10MG TAB 60	Over Allocation Limit
OXYCODONE HCL 15MG TAB (KVK) +100	Over Allocation Limit
OXYCODONE HCL 20MG TAB (KVK) +100	Over Allocation Limit
OXYCODONE HCL 10MG TAB (KVK)+ 100	Over Allocation Limit
TESTOSTERON CYP 200MG/ML (PAD)+IML	Over Allocation Limit
CLONAZEPAM 1MG TAB (MYL) + 1000	Over Allocation Limit
FOCALIN XR 15MG CAPSULE + 100	Over Allocation Limit
MORPHINE SUL 30MG ER TAB+(MKT)100	Over Allocation Limit
DIAZEPAM 10MG TAB (MYL) + 500	Nearing Allocation Limit

FOCALIN 2 5MG TAB (NOV) 100	Nearing Allocation Limit
AL.PRAZOLAM 0 5MG TAB (PPC) + 1000	Nearing Allocation Limit
ADDERALL XR 25MG CAPS + 100	Nearing Allocation Limit
AMPHETAMINE SLT COMBO 15MG TB+100	Nearing Allocation Limit
MORPHINE SUL 15MG ER TAB+(MKT)100	Nearing Allocation Limit
MORPHINE SUL 60MG ER TAB+(MKT)100	Nearing Allocation Limit
OXYCONTIN 80MG TAB (REFORM) 100	Nearing Allocation Limit
LYRICA 150MG CAP + 90	Nearing Allocation Limit
VYVANSE 70MG CAPS + 100	Nearing Allocation Limit

Rx Integrity again simply rubber stamped the request, increasing every limit.

252. Store 5828's troubling dispensing did not improve. By November 26, 2014, Store 5828 was over its limits on hydrocodone as well as Oxy 30. Rx Integrity again requested another threshold increase for Store 5828 from Amerisource on December 1, 2014—this time for hydrocodone, which Store 5828 was dispensing at approximately 50,000 per month. In justifying the increase, Rx Integrity told Amerisource that Store 5828 was in “a rural area with very few chain pharmacies or competitors that have extended hours.” Amerisource denied the request, noting several red flags with Store 5828's orders, including that it “may want to follow-up on” a “top prescriber (Compton) that is approximately 40 miles away, which is a concern,” and which went unheeded:

There will be no adjustment for the HY family at this time. The usage you provided indicates usage is below the default threshold by almost 10,000 units. Secondly, there are multiple pharmacies that are open 24 hours on both sides of the border to service this population. Additionally, there is one top prescriber (Compton) that is approximately 40 miles away, which is a concern. You may want to follow-up on that one.

253. Despite Amerisource's response, Rx Integrity continued to advocate that Store 5828 should have higher hydrocodone ordering limits by repeating the prior arguments that the store was “in a rural area” and was “a busy 24[-]hour store.” Amerisource refused. Less than a month later, Store 5828 was again at its limit of ordering hydrocodone and, again, asked Rx Integrity for “help.” Rx Integrity responded that an increase was unlikely as it had been rejected only a few weeks prior. Rx Integrity finally forwarded to the store the red flags that Amerisource

had identified a month prior. Despite these red flags—and the fact that Store 5828 had exceeded its hydrocodone limits twice in a single month—Rx Integrity *still* stated it would try to get “the [hydrocodone] items [Store 5828] need[s] now” and would “try to get [those] through [Amerisource].” Additionally, Rx Integrity did not “follow-up on” Compton.

ABC was not willing to raise your Hydrocodone limit more than 60,000 for all oral solid Hydrocodone every 4 weeks. ABC indicated there are multiple pharmacies that are open 24 hours on both sides of the border to service this population. Additionally, there is one top prescriber (Compton) that is approximately 40 miles away, which is a concern. I don't think ABC will approve another increase. We will look into why your orders are getting cut, I suspect part of it has to do with HC being CII and orders are weekly vs. daily. The larger orders SIMS is generating weekly may be getting cut with ABC when they exceed your limit even by a few bottles. We will pull some data and investigate further to identify what is occurring but if you can place CSO override requests for the HC items you need now and we will try to get them through ABC.

254. Two weeks later, Store 5828 was over its threshold limits for clonazepam (a benzodiazepine), and by February 4, 2015, Store 5828 was hitting numerous other Amerisource ceilings:

ALPRAZOLAM 1MG TAB (PPC) + 500	Over Allocation Limit
LYRICA 150MG CAP + 90	Over Allocation Limit
CLONAZEPAM 1MG TAB (MYL) + 1000	Over Allocation Limit
OXYCODONE HCL 15MG TAB (ACT)+ 100	Over Allocation Limit
GUAIAIATUSSIN AC SYRP (HT) +473ML	Over Allocation Limit
XANAX 1MG TAB + 100	Nearing Allocation Limit
MORPHINE SULF 60MG ER TAB(EN)+100	Nearing Allocation Limit
MORPHINE SULF 30MG ER TAB(EN)+100	Nearing Allocation Limit
MORPHINE SULF 15MG ER TAB(EN)+100	Nearing Allocation Limit
DIAZEPAM 10MG TAB (MYL) + 500	Nearing Allocation Limit
DIAZEPAM 5MG TAB (MYL) + 500	Nearing Allocation Limit
ALPRAZOLAM 0.5MG TAB (PPC) + 1000	Nearing Allocation Limit
FOCALIN XR 20MG CAPS 100	Nearing Allocation Limit

FOCALIN XR 15MG CAPSULE + 100	Nearing Allocation Limit
ZOLPIDEM 10MG TABS (TEV) + 100	Nearing Allocation Limit
FENTANYL 100MCG/HR TS (WAT) + 5	Nearing Allocation Limit
CLONAZEPAM 0.5MG TAB (MYL)- 1000	Nearing Allocation Limit
CLONAZEPAM 2MG (MYL) + 500	Nearing Allocation Limit
FOCALIN XR 30MG CAPSULE 100	Nearing Allocation Limit
SUBOXONE 8-2MG SL FILM +30	Nearing Allocation Limit
OXYCODONE HCL 30MG TAB (ACT) +100	Nearing Allocation Limit
HYDROCOD-APAP 7.5-325 TB(ACT)-500	Nearing Allocation Limit
OXYCOD-APAP 7.5-325 TAB (ACT)+100	Nearing Allocation Limit
BUUPRENORPH/NAL 8/2MG SL+TB(AMN)30	Nearing Allocation Limit
OPANA ER 30MG TAB 60	Nearing Allocation Limit

255. As before, Rx Integrity simply requested that Store 5828 continue to submit “request[s] for additional product and ask for a review of [the] limits,” which the pharmacy manger did the following day.

256. Less than a month later, Store 5828 was over another benzodiazepine limit with Amerisource. Without stricter policies and oversight, Store 5828’s loose dispensing continued to send opioids and other controlled substances into the community.

257. A similarly problematic store was 10959 in Jamestown, Tennessee. In May 2013, as Walgreens was shifting its supplier from Cardinal to Amerisource, Store 10959 was having trouble obtaining the desired amount of 10mg oxycodone. Upon hearing that the Store had “lost 21 customers” because of the lack of oxycodone, the pharmacy supervisor asked Rx Integrity to “loosen the reigns on this store or at least give them an explanation as to why they are being so restricted on this product.” Store 10959 complained that it had been “way understocked . . . for 2 months.”

258. In response, Rx Integrity increased Store 10959’s monthly threshold on 10mg

oxycodone to 14,000 and ensured that the store would receive “18 bottles [(equal to 1,800 pills)] early next week.” At the time, Jamestown’s population was approximately 1,600 people.

259. When one Rx Integrity employee raised concerns with the increase in oxy and whether Amerisource would even ship that much, Ms. Daugherty was dismissive, noting that the Store had gotten “27 bottles” the prior week, equal to 2,700 oxycodone pills:

From: Daugherty, Patricia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WALGREENS.ONMICROSOFT.COM-54052-DAUGHERTY, PATRICIA M. (F1120697)]
Sent: 5/17/2013 9:41:29 AM
To: Mills, Steven [steven.mills@walgreens.com]
Subject: RE: Oxy/apap 10/325

Maybe -but they need like 20 bottles a week anyway they did get like 20 bottles in the past check it out - maybe this was from Cardinal. Checked Ed's list of stores when he ran analysis against ABC limits a couple weeks ago and the store is not on Ed's list but ABC could flag it. We could try and see what happens? They got like 27 bottles last week right?

From: Mills, Steven
Sent: Friday, May 17, 2013 9:38 AM
To: Daugherty, Patricia
Subject: RE: Oxy/apap 10/325

Do you think ABC will even ship that much? Won't it trigger ABC's SOM's process?

Be Well,
Steve

Steven Mills, CPhT
200 Wilmot Road MS 2161
Deerfield, IL 60015
p. 847-315-2914
f. 847-315-3109

260. Outside of the department, though, Rx Integrity’s only warning to Store 10959 regarding its dispensing numbers was to “[p]lease make sure you are following GFD on all scripts as you already mentioned, just want to reinforce as I did increase the amount you can get for this product.”

vii. *Walgreens Was Solely Focused on the Financial Benefits of Selling Opioids.*

261. For years, Walgreens failed to train pharmacists and technicians about detecting and preventing opioid abuse and diversion.

262. In fact, during a 2009 DEA investigation, Walgreens noted internally that it offered

no employee training regarding the dispensing of controlled substances.

263. Even as late as 2014, Walgreens was failing to train its employees on its Good Faith Dispensing policies.

Issue:

Based on a detailed review of the training data pertaining to 2013 and CY2014, IA identified the following:

- 2013 Training - IA noted that approximately 180 active employees, at the time of our testing (September 2014), had not completed the Good Faith Dispensing training and that several thousand active employees had not completed the Good Faith Dispensing Policy Acknowledgement. The training was assigned throughout the year to a multitude of positions within the stores, including pharmacy personnel. Employees were given one month to complete the training once assigned.
- 2014 Training - IA noted, at the time of our testing (November 19th 2014), over 35,000 employees had not completed the Good Faith Dispensing training that was assigned in early October and was required to be completed by November 7th, 2014. .

264. Walgreens' policies and practices long encouraged increasing the sale of opioids and discouraged meaningful review of prescriptions. Walgreens set speed and volume goals for pharmacists. It also had a tool that tracked the time it took a pharmacist to fill a prescription. Volume goals and bonus calculations included controlled substances as late as 2013—until the DEA prohibited it.

265. When Walgreens told its employees about the change to its bonus system and volume goals, it chose not to tell them why:

Please see the attached talking points for the DM/RxS to use with store leadership. I removed the reference to the DEA requiring us to do this, and provided some verbiage on how the adjustment is calculated.

266. Walgreens anticipated that the goals would be an issue after the DEA forced them to drop volume bonuses based on controlled substances, so when pharmacists complained that Walgreens' speed and volume goals prevented the pharmacists from complying with TDGFD policies, it had a response ready—which of course still emphasized sales:³²

³² Emphasis added.

Anticipated question: What does that mean with targets? -- Tasha and Rex to reach out to Jeremy and Dan to get a better idea of what it means for numbers and try to cover at the next Market Leadership meeting

GFD concerns doesn't relieve you from trying to attain the numbers that have been set for you

267. In Tennessee, Store 10815 in Sparta asked for additional hours for its pharmacy staff to comply with TDGFD policies. Although Walgreens noted that a supervisor could approve additional time, it suggested that this was unnecessary because “TDGFD is [already] incorporated into the Labor Model.”

268. While the opioid epidemic continued to rage, Walgreens continued to prioritize sales over detecting and preventing abuse and diversion. For example, in internal correspondence from July 2010, Walgreens’ headquarters ranked its pharmacies by the amount of oxycodone prescriptions dispensed the previous month. Walgreens sent the list to its market pharmacy supervisors, instructing them to look at the stores at the bottom of the list and to reinforce that legitimate prescriptions should not be turned away.

269. These financial drivers loomed large for pharmacists, and the Company’s revenue from selling opioids was never far out of mind.

270. In one example, Store 6963 in Paris, Tennessee, hit its limit for ordering hydrocodone from Amerisource in July 2014. Without apparently conducting any due diligence, Rx Integrity lobbied Amerisource to increase the shipments of hydrocodone to the Store. As expected, increasing the limit did nothing to curtail Store 6963’s dispensing of hydrocodone, and in fact, Store 6963 sought *another* increase in its ordering limits for hydrocodone the very next month. The pharmacy manager’s only concern was losing business, writing that the Store had “lost more than 500 rx in [J]uly due to [out-of-stock] and now we will be losing more.”

271. In Tennessee, Walgreens’ pharmacy employees also feared corporate’s response to

the financial impact of *not* filling opioid prescriptions. Even in January 2015, a pharmacist at Store 7302 in Goodlettsville was receiving such a high volume of automatically ordered opioid shipments that they needed an additional safe installed, despite the fact that the drugs were neither needed nor wanted and were causing problems.³³

I didn't think to ask you when you were here. I am having an issue with the number of packages of various C2 products the auto order is placing. I was lowering the quantities (almost \$6,000 per week) and not having issues with OOS, but then learned I was negatively affecting my track order changes which are part of my bonus calculation. If I can't lower the quantities we are going to **need another safe installed** so I can store these large quantities (e.g. 40 bottles oxy/apap 10/325, 18 boxes of fentanyl 75, etc.) . I know there is a corporate push to decrease inventory, but why does **this not apply to our C2's?** We can PDQ an item for next day delivery so **it doesn't make sense to carry such large quantities.** Please advise.

Moreover, he was afraid that he could not safely store that volume of controlled substances.

272. Even more telling was that Walgreens' broader "push" to decrease pharmacy inventory specifically *excluded* CIIIs, the most dangerous prescription drugs on the market.

273. Two months later, Store 7312 in Chattanooga had similar apprehensions regarding the amount of hydrocodone it was receiving, writing that "it looks like a lot of medication to be receiving that has left me a little concerned."

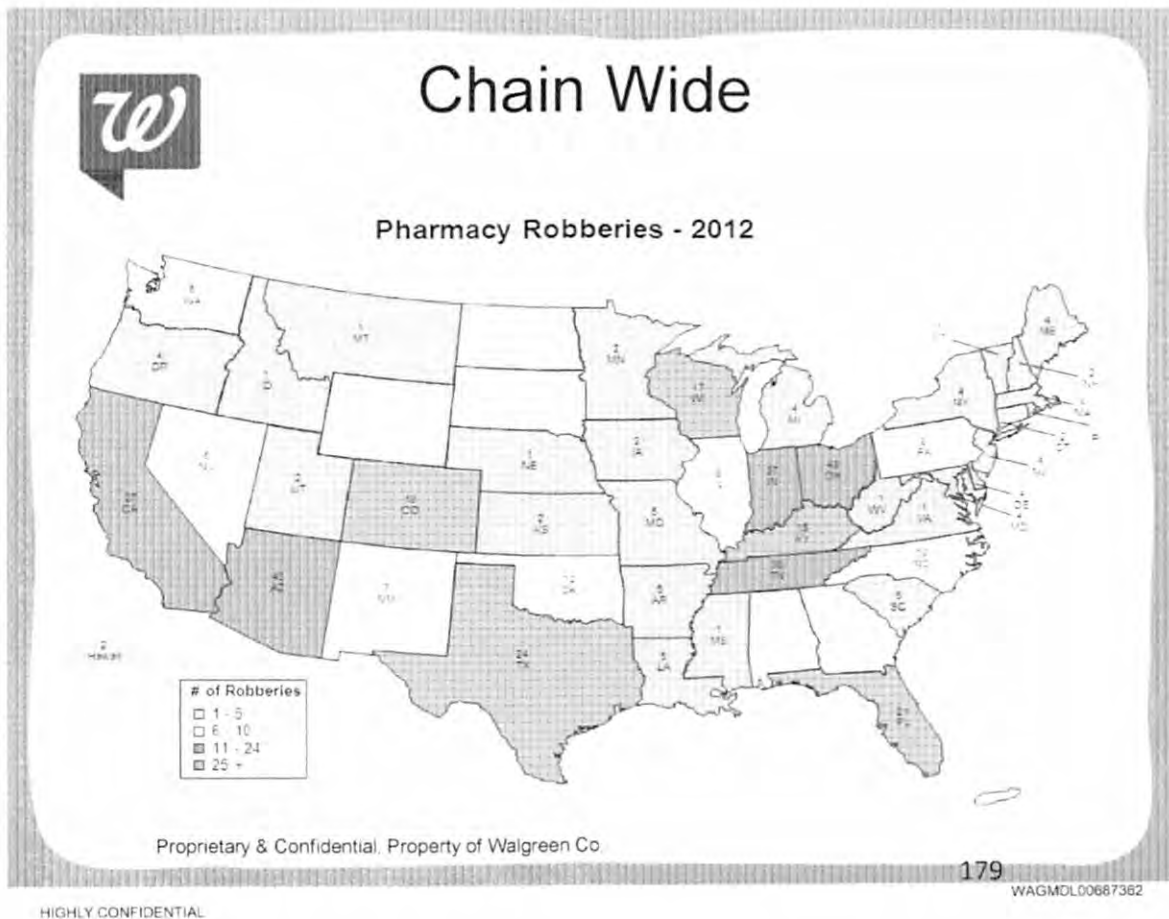
I had a question, we are getting 21 bottles (500 count each) of hydrocodone/apap 10-325mg and I never see us reaching our allocation limit. Is this correct? We update our on hands periodically and everything is correct; it just looks like a lot of medication to be receiving that has left me a little concerned.

274. These stores had reason to worry about keeping those unnecessary levels of opioids on-hand—robberies. The Knoxville News Sentinel had previously reported in March 2011 that Walgreens stores had "handed over pills 30 times locally in the past year and a half, by the company's count. A single month – December – accounted for half a dozen of those holdups."³⁴ The same article also stated that "[d]rugstore holdups have boomed in the past few years ... apparently fueled by the growing abuse of prescription drugs such as oxycodone."

³³ Emphasis added.

³⁴ <https://archive.knoxnews.com/news/local/new-twist-at-walgreens-time-locked-safes-for-pain-pills-ep-406012589-358041771.html/>.

275. In 2012, Tennessee ranked third in the country for robberies of Walgreens' pharmacies. At 35, Tennessee had more robberies than California, New York, Texas, and Florida.



276. Walgreens' opioids had real consequences in Tennessee. For example, Store 3227 in Memphis, was robbed in September 2012, releasing 1,000 oxycodone pills onto the streets at once, worth approximately \$16,000.

277. Even though only 10% of Walgreens' pharmacies were located in Tennessee, they represented 21% of Walgreens' robberies across the country.

As shown in Figure 2, over the past 12 months the chain experienced 338 pharmacy robberies. The Tennessee and Wisconsin markets led with 30 incidents each.

Figure 2

	June 2012	July 2012	August 2012	September 2012	October 2012	November 2012	December 2012	January 2013	February 2013	March 2013	April 2013	May 2013	Grand Total
Tennessee	7		4	2	2	5	2	3	3	2			30
Wisconsin	3		2	1	1	4	4	5	6	1	2	1	30
Ohio	4	7	1	3	5	1		3		1	1		26

278. While these robberies were occurring in Tennessee, Walgreens was actively lobbying *against* legislative efforts in the state to require secure storage of controlled substances. A “2013 WINS LIST,” which extolled Walgreens’ successful lobbying efforts, boasted internally about “killing” a bill which would have required controls to be kept securely in a safe:

TN: Killed a bill requiring secure storage specifically, in a safe of Controlled substances in a pharmacy.

viii. Walgreens’ Policies Failed to Recognize and Address Red Flags for Patients.

279. As a distributor and one of the nation’s largest pharmacy chains, Walgreens possessed a wealth of data and was uniquely situated to identify suspicious prescribers and prescriptions and other red flags of abuse and diversion. Nevertheless, Walgreens did no such thing. Consequently, Tennessee was inundated with opioids.

280. With regard to patients, Walgreens knew of red flags such as signs of doctor shopping and pharmacy shopping, and patients traveling long distances to obtain opioids. Walgreens failed to properly investigate and respond to these red flags.

281. By way of example—although there are many others, between 2006 and 2016, Walgreens sold nearly 83,500 ODUs to *one* patient. That equates to over 20 opioid pills per day for eleven years. Moreover,

- Walgreens also filled prescriptions for muscle relaxers and benzodiazepines for the patient during that timeframe. Transactions for one or more holy trinity drugs often occurred within a few days of one another. To this end,

the patient sometimes purchased two or more cocktail drugs from Walgreens during the same transaction.

- The patient travelled to various Walgreens stores in different East Tennessee cities to fill different prescriptions, which when combined, were inherently suspect, such as the holy trinity.
- Walgreens ignored evidence that the patient was doctor shopping as well, instead filling overlapping prescriptions from different doctors for the same controlled substances.
- Below is a snapshot of the patient's prescription drug purchases from Walgreens over a three-month period in 2010:

STORE #	SOLD DATE	DRUG	QTY
7407	03/04/2010	TIZANIDINE 4mg	90
7407	03/04/2010	OXYCONTIN 80mg	90
4169	03/29/2010	OXYCODONE 30mg	720
7407	03/29/2010	TIZANIDINE 4mg	90
3388	04/01/2010	OXYCONTIN 80mg	90
3209	04/27/2010	OXYCODONE 15mg	1,140
3209	04/27/2010	TIZANIDINE 4mg	90
3209	05/02/2010	OXYCONTIN 80mg	90
6609	05/25/2010	OXYCODONE 30mg	720
6609	05/25/2010	ALPRAZOLAM 1mg	90
3388	05/28/2010	TIZANIDINE 4mg	270
6609	05/30/2010	OXYCONTIN 80mg	90

282. In another example, Walgreens Store 11129 in Portland sold another patient 164,587 ODUs between December 2015 and 2019. This customer's opioid prescriptions were written by eight different health care providers, and the volume being dispensed at any given time exceeded any conceivable legitimate medical purpose. This patient was receiving nearly a gallon of liquid hydrocodone per month. Out of the 167 controlled substance prescriptions this patient received from Walgreens during that timeframe, they received an average of 986 doses per prescription.

ix. Walgreens' Policies Failed to Recognize and Address Red Flags for Prescribers.

283. Walgreens also ignored red flags related to high-volume, suspicious prescribers,

such as reports that the prescriber is operating a pill mill, routinely writing large-volume opioid prescriptions, particularly in dangerous combinations, prescribing to out-of-area patients, giving numerous patients the same diagnosis, and operating his or her practice as “cash only.”

Dr. Charles Morgan

284. Dr. Charles Morgan, mentioned in an earlier section, was a solo family practitioner located McMinnville, Tennessee. His deeply problematic opioid prescribing practices, and Walgreens’ refusal to take action in the face of urgent warnings, is emblematic of what its top priority was—profits. Compliance was always secondary if the prescriber was a rainmaker.

285. Dr. Morgan was initially disciplined by the Board of Medical Examiners in 2004 for prescribing opioids to his then-girlfriend without maintaining a medical record for her and his license was put on probation for five years.

286. Walgreens received an ominous warning about Dr. Charles Morgan on October 3, 2015, when Brandon Potter, the pharmacist at Store 07075 in McMinnville emailed his manager Richard Dean to report a litany of red flags that could only indicate one thing—Dr. Morgan was operating a pill mill and the pharmacist was rightly concerned. Each red flag alone should have been enough to set off an alarm, but the pharmacist was also right to be concerned that without decisive action from Walgreens, stores in the neighboring counties could be contributing to abuse and diversion thanks to Dr. Morgan’s unlawful prescribing.

John,

Here's what we've gathered so far on Charles Dwight Morgan, NPI 1497834188, DEA # BM4137940. Please forward to whomever can make the call (probably Gene Hoover but maybe Dr. Mudd can do so).

- 1) He was paid a visit by the DEA a few months ago.
- 2) McMinnville Drug Ctr was just audited and understood it was primarily due to his prescriptions.
- 3) Currently NO pharmacy in the county (Fred's, Walmart, Sullivans, Kroger, or Webb's) will accept new patients from his office due to allocation concerns. McMinnville Drug Center and Rite Aid have given their patients a month to find new pharmacies and then will no longer fill any prescriptions from him.
- 4) McMinnville Drug Center became concerned when they received scripts from his office while they knew he was hospitalized. Apparently this coincided with his change in signature from something that just resembled a check mark to an actual signature accompanied by a stamp of said signature. Several of the pharmacies are concerned that it is the office staff, not Dr. Morgan, writing & signing the scripts.
- 5) He has started including diagnosis codes on his scripts but they are often odd - while his practice is listed with the DEA as "FAMILY PRACTICE OBSTETRICS", he has started putting "cancer" as the diagnosis for many of his patients but they are being given high dose hydro/apap with no addl therapy from himself or anyone else. This has been noticed here as well as other pharmacies with patients becoming defensive when addressed. As another example, the office has put back pain on script but the patient says they are being treated for migraines. Even on non-controls we are noticing oddities - prescriptions off market for years, such as a precursor to EpiPens, and another patient being prescribed insulin and diabetic supplies without diabetes, but rather for weight loss. We also have had repeated occurrences of him writing non-controlled medications that the patients are allergic to, but we cannot get ahold of the office to get them changed. We also have had nonsensical directions on scripts (ie, Nexium four times daily) but, again, cannot get ahold of the office to clarify.
- 6) Patients have complained at multiple pharmacies that they are paying \$60 per controlled script but cannot get anyone to fill them.
- 7) Other pharmacies have noted he is prescribing controls for patients currently serving jail time.
- 8) McMinnville Drug brought to our attention that he has patients routinely in his parking lot from 8 different counties.
- 9) We have not been able to speak to him on the phone. It's always a staff member, mostly his wife Angela who is very belligerent and antagonistic. Charles at McMinnville Drug Ctr was able to get him on the phone. The gist of the conversation was Charles' trying to get him to acknowledge several of these concerns but Dr. Morgan was also belligerent and antagonistic and threatened a lawsuit if Charles' & McMinnville Drug Ctr stopped filling his scripts.
- 10) Many of the patients that are presenting at this time are asking for their insurance to be bypassed and are willing to pay high cash prices. We checked the CSMD on several and they were too early. With the flood of close to forty patients at the same time

yesterday, we began simply explaining that we would pass our allocation limits [we've been restricted on benzodiazepines repeatedly (meaning we've run out) and hydro/apap has been close to out or just out when we get our weekly order repeatedly]. We normally have a half dozen different meds at or over our allocation limit in the RX Integrity site.

11) It's been recommended for us to pay a visit to the office, but to be honest, I would not be comfortable being in that environment at all.

12) We had numerous GFD refusals back during the spring when he began rotating oxy/apap, hydro/apap with a month supply of each but written every 2 weeks with either the patient stating he was changing the med or a note on the script stating it was okay to fill due to change of therapy. The CSMD would show a repeated pattern on these patients.

13) We've had several other pharmacies mention and have refused several of these ourselves, where he prescribes a patient with no prior history Norco 10/325, four times daily and gives them several scripts at the same time predated (which adds to confusion of whether he's in office or not).

I have a reasonable concern with this office and believe that we as WBA need to take steps to insulate ourselves from the practice. We've been told repeatedly to follow GFD practices and just to rely on that, but I firmly believe this practice is a danger to the community and needs to be blocked across the board from any WBA pharmacy. I fear some of these will be filled in those 8 counties that do not understand the situation with this prescriber.

Thank you,
G Brandon Potter,
RXM 07075

287. Notably, the email also indicates that the pharmacist and manager had had previous discussions concerning Dr. Morgan.

288. Mr. Dean, the pharmacy manager, forwarded the pharmacist's email to the Area Healthcare Supervisor, Austin Mudd:

From: Dean, Richard
Sent: Monday, October 12, 2015 11:26 AM
To: Mudd, Austin
Cc: Store mgr.07075
Subject: FW: Prescriber issue, C Morgan, McMinnville

Austin,
Can you take a look at the attached email.
John Horton and Brandon Potter RXM have some serious concerns regarding the Doctor.
What action can we take or options do Walgreens have in a case like the one described?

289. Mr. Mudd responded with an offer to have a quick conference call to talk about Dr. Morgan, saying that he "had some notes and some additional information [that he] was able to get

from RxIntegrity to discuss.”

290. Mr. Mudd then sent the following to Rx Integrity:

From: Mudd, Austin
Sent: Monday, October 12, 2015 11:51 AM
To: RxIntegrity
Subject: RR: GFD Diagnosis Question

RxIntegrity,

What are your recommendations when it comes to appropriate GFD practice for:

1. MD who writes diagnosis code on the prescription, yet the patient confirms that it is incorrect, for multiple patients; eg diagnosis is for back pain, but patient says migraines?
2. When pharmacy attempts to call MD office, they never get MD and the MD's wife is very antagonistic towards the staff, including threats of lawsuit if we do not fill?
3. MD office is a "Family Practice Obstetrics" yet writes controls that are outside of their general practice; eg cancer, high dose pain med combinations?
4. When other pharmacies in the greater area location of the MD practice are no longer filling for the doctor as a whole due to the above instances?

The prescriber of the above instances is Charles Dwight Morgan, NPI 1497834188, DEA # BM4137940 out of McMinnville, TN.

My current counsel is to continue individualized patient care and assessment for GFD and no blanket refusals for the MD, but **can we use past instances as reasons against future fills?**

Thanks in advance for guidance,
Austin

291. Notably, this watered-down email excluded key facts contained in the original red flag email, such as Dr. Morgan prescribing controls for patients currently serving jail time, patients asking to pay cash in order to bypass insurance restrictions and to fill early, throngs of patients all presenting at the same time with similar or identical prescriptions, and patients routinely coming from at least eight counties to see Dr. Morgan. But the two most arguably damning statements that were intentionally left out were:

It's been recommended for us to pay a visit to the office, but to be honest, **I would not be comfortable in that environment at all.**

....

I believe we are **far past any reasonable concerns with this office** and believe that we as **WBA need to take steps to insulate ourselves** from the practice. We've been told **repeatedly** to follow GFD practices and just to rely on that, but I **firmly believe this practice is a danger to the community** and needs to be blocked across the board from any WBA pharmacy. **I fear some of these will be filled in those 8**

counties that do not understand the situation with this prescriber.³⁵

292. The question at the end of Mr. Mudd's email highlights a crucial defect in the GFD policies—being forced to analyze every prescription individually obscures the larger pattern of red flags. The above exchange also illustrates how the GFD analysis is further hindered by the way Walgreens shares this red flag information between its pharmacies, effectively siloing and downplaying the warnings.

293. As shown by Walgreens own data, this fear was far from unfounded. After this email was initially sent in October 2015, a total of 36 Walgreens pharmacies spread across 17 counties in Tennessee continued filling more and more of Dr. Morgan's prescriptions for controlled substances in the months that followed.

294. Mr. Stahmann from Rx Integrity responded with the following email, which noted the numerous valid red flags, but then once again stated that pharmacists were nevertheless not permitted to block his prescriptions outright, despite the suspect nature:

³⁵ Emphasis added.

From: RxIntegrity [RxIntegrity@walgreens.com]
Sent: 10/12/2015 12:05:00 PM
To: Mudd, Austin [austin.mudd@walgreens.com]
Subject: RE: RR: GFD Diagnosis Question

Hi Austin,

Prescribers cannot and should not force/threaten pharmacists to fill controlled substance prescriptions. It is ultimately up to the pharmacist to determine to fill or refuse the prescription.

In the last 90 days Walgreens had filled 1,007 prescriptions from this prescriber, 46% of those were for a controlled substance. The breakdown is below:

31.1% opiate

13.9% benzodiazepine

5.1% antidepressant

Among other prescribers in his field of study (family practice) he ranks in the 100th percentile for alprazolam, 99th percentile for hydrocodone and 90th percentile for oxycodone.

He has previous sanction/disciplinary actions on his record:

Sanction Information				
Offense: Violation of Controlled Substances, Misprescribing or Overprescribing Drugs				
Offense: Professional Misconduct, Otherwise Undefined				
Action	Start Date	End Date	Fine	Adminstrating Body
Probation of License			\$0.00	Tennessee Board of Medical Examiners
Education/Training			\$0.00	Tennessee Board of Medical Examiners

From his current and past prescribing habits as well as the information you provided, he does pose very serious GFD concerns.

However, with all of that being said, as long as a prescriber has an active/valid DEA and State license, we should in no circumstance be 'blanketly' refusing prescriptions...each prescription/patient must be evaluated for GFD on a case by case basis.

The pharmacists should continue following GFD and looking for red flags such as high qty's, distance, trends such as all patients getting the same dose and qty of the same medication, diagnosis that don't make sense with the medications prescribed, checking PMP for doctor and pharmacy shopping, etc.

Regardless if the decision is to fill or refuse, make sure to properly document the steps taken to reach that decision either on the TD checklist or on the prescription hardcopy or IC+ image.

Let me know if you have any questions or want to discuss.

295. Based on this feedback, Mr. Mudd sent Mr. Dean and the store manager the following response later that afternoon, stating that he would “get clarification on [their] ability to use past discrepancies as bearing to future GFD filling decisions” based on the reported red flags

and noting that many of those red flags would be a valid reason not to fill:

Sent: 10/12/2015 12:02:08 PM
To: Dean, Richard [richard.dean@walgreens.com]
CC: Store mgr. 07075 [mgr.07075@store.walgreens.com]
Subject: RE: Prescriber issue, C Morgan, McMinnville

Richard and John,

I have sent a request to RxIntegrity shortly ago to get clarification on our ability to use past discrepancies and negative situations as bearing to future GFD filling decisions and specified reasons Brandon provided. I will update on their guidance.

Notes:

- While we can assume 100% truth from the other pharmacies, their information would legally be seen as hearsay evidence.
- #1: Unless there was litigation or formal, public reprimand, a simple DEA visit is not sufficient for refusal for improper prescribing.
- #4: Legally all prescriptions must be signed in ink by the authorizing physician or their authorized representative, NP, etc. Stamps and signatures that are not their normal, legal signature are not allowed and invalidate a prescription. This would not be reason to complete a GFD as the prescription would not be a valid prescription to start the GFD process.
- #5: Improper diagnosis would be a valid consideration for reason not to fill as a "Red Flag" and note of such on GFD.

Also, scope of practice would be of consideration as cancer and high doses of pain medications would not be normally considered for Family or OB.

- #6: MD, or staff refusing to answer our questions or be antagonistic towards questions would be a valid consideration for reason not to fill and note of such on GFD.
- #10: Patients asking not to use insurance would be a valid consideration for reason not to fill as a "Red Flag" and note of such on GFD.
- #13: Predating prescriptions is not legally allowed. Any prescriptions being done as such are not valid and can be refused or noted for future refusals for not being valid.

Also, normal pain management therapy would titrate therapy up to high doses. If patient is naive to therapy, then this would be a valid consideration for reason not to fill as a "Red Flag" and note of such on GFD.

Thanks,
Austin

296. Later that afternoon, Mr. Mudd emailed the following questions to Mr. Stahmann, which seem to have gone unanswered:

From: Mudd, Austin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WALGREENS.ONMICROSOFT.COM-54052-MUDD, AUSTIN (DB-47683 93A4009F)]
Sent: 10/12/2015 12:54:02 PM
To: RxIntegrity [RxIntegrity@walgreens.com]
Subject: RE: RR: GFD Diagnosis Question

Thanks Eric for the detailed information and guidance. Can previous instances (negative GFD: cash patients, wrong diagnosis, etc) be any bearing on future patient GFD decisions? If so, would they note such on their refusal, again counseling no blanket refusals for the office?

297. Mr. Mudd's questions did not receive a response. It took just under six months

before Dr. Morgan was again reported as “Another Prescriber of Concern.”

298. On March 1, 2016, Ms. Daugherty sent the following message to an area supervisor:

From: RxIntegrity
Sent: Tuesday, March 01, 2016 3:45 PM
To: Maney, Charles
Subject: FW: Prescriber issue, C Morgan, McMinnville

Hi Rusty,
If you are not already aware, our pharmacists need to follow GFD and still take it script it script however if they are not comfortable filling each script they have the right to refuse. They just cannot make a blanket statement to refuse and we cannot block him yet. We can probably add a comment like follow GFD in his prescriber record. We will send his info over to our CMS office for review though this may take quite a bit of time though we cannot make any promises.
Thanks
Patty

299. Ms. Daugherty then requested that the comment “Follow GFD” be added “to all of Dr. Morgan’s records.” This translates to looking at each of Morgan’s prescriptions individually rather than in context of his other prescriptions, which would effectively obscure many red flags, such as whether Dr. Morgan was writing the same prescriptions for multiple patients, particularly if those prescriptions were being filled by different pharmacists.

From: Daugherty, Patricia [patricia.daugherty@walgreens.com]
Sent: 3/1/2016 3:45:17 PM
To: Mills, Steven [steven.mills@walgreens.com]
Subject: FW: Prescriber issue, C Morgan, McMinnville

Can you add this comment “Follow GFD” to all of Dr. Charles Morgan’s records?
Thanks
Patty

300. The next day, Ms. Daugherty circulated the pharmacy’s litany of red flags to Ms. Polster again, asking “[d]o we ever want to include store’s observations, I know it’s just hearsay in some cases *but may be worthwhile like with this guy.*”

301. Ms. Polster affirmed, saying it would be helpful to Rx Integrity in making its determination but specified that they “would need to call out the comments as [hearsay].”

302. That same day, Mr. Stahmann also emailed Ms. Polster, reporting Dr. Morgan as

“Another Prescriber of Concern” and copying Ms. Daugherty and Ed Bratton:

From: Stahmann, Eric [eric.stahmann@walgreens.com]
Sent: 3/2/2016 8:26:59 AM
To: Polster, Natasha [tasha.polster@walgreens.com]
CC: Daugherty, Patricia [patricia.daugherty@walgreens.com]; Bratton, Edward [edward.bratton@walgreens.com]
Subject: Another Prescriber of Concern
Attachments: CHARLES DWIGHT MORGAN.docx

Hi Tasha,

Another prescriber for Karen to review.

Side note –From 2004-2009 he was on probation for prescribing controlled substances to addicts (This information is included in his Word profile).

303. Ms. Daugherty sent the following email to Mr. Mudd and Mr. Dean less than an hour later:

From: Daugherty, Patricia
Sent: Wednesday, March 02, 2016 9:19 AM
To: Mudd, Austin; Dean, Richard
Subject: FW: Prescriber issue, C Morgan, McMinnville

Hi Austin and Richard,

FYI on this prescriber. Our pharmacists need to follow GFD and still take it script it script however if they are not comfortable filling his scripts they have the right to refuse each script but they should review each one first. They just cannot make a blanket statement to refuse all his scripts and we cannot block him yet. We will add a comment to his GFD on his prescriber record. We sent his info over to our CMO (Chief Medical) office for review for potentially blocking; Dr. Morgan in IC+, though this may take time for review and we cannot make any promises depending on the results of their review.

Thanks

304. Another hour later, Mr. Mudd responded:

From: Mudd, Austin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WALGREENS.ONMICROSOFT.COM-54052-MUDD, AUSTIN (DB-47683 93A4009F)]
Sent: 3/2/2016 10:23:05 AM
To: Daugherty, Patricia [patricia.daugherty@walgreens.com]; Dean, Richard [richard.dean@walgreens.com]
Subject: RE: Prescriber Issue, C Morgan, McMinnville

Thanks Patty.

Richard and I spoke with the store previously as they wanted to get a blanket refusal from Walgreens for Dr. Morgan and we got him on board about understanding the right thing to do and the liability that a blanket refusal has for him, the store and the company. They essentially wanted the easy way out and not have to make the difficult decisions each time. With the recent independent closing, it has caused a recent influx to them, thus reversions back to wanting an easy, short-term solution.

We will reach out and counsel him again to the WHYs behind GFD and staying the course with it, but at the same time reiterating that he and his team has full ability to refuse any prescription based on documented GFD concerns (other than "Dr. Morgan" as their reasons).

Thanks for your assistance. We will keep you posted on the frontline grind.

305. Mr. Mudd then emailed Mr. Dean separately three minutes later:

From: Mudd, Austin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WALGREENS.ONMICROSOFT.COM-54052-MUDD, AUSTIN (DB-47683 93A4009F)]
Sent: 3/2/2016 10:26:30 AM
To: Dean, Richard [richard.dean@walgreens.com]
Subject: RE: Prescriber issue, C Morgan, McMinnville

Richard,

Let me know and we can get Brandon and John on the phone again to first listen to their concerns and then reiterate the need to stay the course with GFD and that they still have support to make the decision to refuse a prescription (on a case by case basis).

306. Initially, Walgreens' due diligence file on Dr. Morgan contained his disciplinary action and dispensing analysis, but the contents of the October 2015 red flag email were not included until March 2, 2016—six months after it was sent. In the meantime, Dr. Morgan kept prescribing and Walgreens kept filling.

307. Pharmacist Brandon Potter in McMinnville once again raised concerns regarding Dr. Morgan's prescribing on July 19, 2016, and asked Rx Integrity a question about GFD policy:

Hello,

With the updated GFD policy (copied below) I have a question regarding # 4. We

have a local prescriber who commonly prescribes single opioid therapy. When the scripts are denied for not following Tennessee Chronic Pain Guidelines, *he will then write a script for ibuprofen or naproxen. It was passed down that we then need to reconsider when scripts are given in those cases and if therapy is compliant (which is the goal) then we should fill and that we should not have the mentality of looking for reasons to deny but how we can help these patients and fill their medications.* With the update to the policy it looks like this is being specifically contradicted. If you would like to review specific prescribing patterns, the prescriber is *Charles Morgan*, [DEA # redacted].

Please advise.³⁶

308. Number 4 of the Company's TDGFD and Validation Procedures for pharmacist validation was:

Check the Target Drug prescription for unusual dosage, directions, or decoy. A "decoy" is a non-controlled drug written with a Target Drug or other cocktail prescription (combination of an opioid, Xanax [(alprazolam)], and Soma [(carisoprodol)]) for a product (e.g., *ibuprofen*, HCTZ, lisinopril) which the patient states he/she does not need.³⁷

309. Ms. Daugherty responded the next day, advising him that:

From: RxIntegrity [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9DD965D0C98D455BB792EF3CD5B49F78-RXINTEGRITY]
Sent: 7/20/2016 10:09:27 AM
To: Store rxm.07075 [rxm.07075@store.walgreens.com]
Subject: RE: question on policy update

Hi Brandon

The only change to the TDGFD policy was that you should not be printing PMP any longer after reviewing. Number 4 has not changed. It states that if the patient comes in with a script for Oxycodone and naproxen for example and only asks for Oxycodone, that could be a red flag. However, that could also be a red flag you can resolve if in your professional opinion and taking everything into account, you feel it's appropriate to dispense. You also have the right to refuse the prescription if you do not feel it's appropriate for the patient. Take into account the entire picture of the patient, the indication, patient's history, PMP, your conversation with the patient, possible conversation with the prescriber, etc. before making the decision to dispense. Each script should be reviewed individually as each patient and situation can be different.

Feel free to call me if you want to discuss further.

Thanks
Patty

310. Once again, even in the face of mounting evidence that it was dealing with a pill mill, Walgreens' compliance division assured its pharmacists that red flags could be resolved, as

³⁶ Emphasis added.

³⁷ Emphasis added.

“each patient and situation can be different.” But by forcing its pharmacists to view the information in a piecemeal, siloed manner and not disseminating such alarming reports, Walgreens held the door open for more and more dangerous drugs to flood Tennessee.

311. Months later, in December 2016, Walgreens encountered one of Dr. Morgan’s patients who filed a complaint with the Company claiming that Store 7075 was refusing to fill his prescription for ibuprofen, known as a “decoy” prescription, and Norco (hydrocodone plus acetaminophen). The Walgreens customer service representative followed up with the Store, which reported that:

Pt hasn’t been refused; *he hasn’t even received a script from his physician yet* for the med he *expects* to be refused. Because *a lot of his friends have had GFD refusals* he was calling to complain ahead of time. It was explained that a script has to be presented to go through the review process and a determination made at that point.³⁸

312. Due to this expectation, the customer called again day after day to inquire whether they would fill his not-yet-written Norco prescription. Finally Mr. Dean called the customer and reported back to Walgreens that “[t]he customer had never been refused a fill[.] ... He hoped if making a complaint I would call the store and *motivate them not to refuse to fill* based on Good Faith Dispensing Policy. He did not even go to Walgreens to be refused.” Mr. Dean also noted that he “g[a]ve him advice not to make false claims” and “to be honest.”³⁹

313. But knowing that, in addition to the red flags that had previously appeared, Dr. Morgan had patients who were making such demands did not raise suspicion at Rx Integrity sufficient for them to block him.

314. On March 13, 2017, Pharmacist Potter emailed Mr. Mudd, copying Mr. Dean, the pharmacist at Store 07075, and the pharmacist at Store 09208, to inform them that Dr. Morgan had

³⁸ Emphasis added.

³⁹ Emphasis added.

been disciplined by the Board of Medical Examiners again, and this time he agreed to surrender his medical license, effective March 8, 2017.

315. The pharmacist from Store 10815 responded, copying Mr. Mudd and the other pharmacists, saying that “[t]hat matches what his office told us on 2/28/17,” meaning that at least one Walgreens pharmacy had important information that was not shared with the other locations—a reoccurring issue at Walgreens stores throughout Tennessee.

316. Less than ten minutes later that same day, Mr. Mudd responded to the group with praise, thanking them “for taking the high road” and saying:

From:	Mudd, Austin [austin.mudd@walgreens.com]
Sent:	3/13/2017 4:08:54 PM
To:	Store rxm.10815 [rxm.10815@store.walgreens.com]
CC:	Store rxm.07075 [rxm.07075@store.walgreens.com]; Store mgr.07075 [mgr.07075@store.walgreens.com]; Store rxm.09208 [rxm.09208@store.walgreens.com]; Dean, Richard [richard.dean@walgreens.com]
Subject:	Re: Charles Morgan update

While I'm sure it was at times highly frustrating, I want to say thank you to all for taking the high road and correct path by making an individual and clinical decision for each prescription vs blanket refusals. For this we have helped prove the greater worth of a pharmacist, especially a Walgreens pharmacist, more than one who simply dispenses medications as the doctor orders.

Thank you all and continue the great work!

317. Per the 2017 Agreed Order, the Board of Medical Examiners found:

- That notwithstanding the previous discipline on [his] license, that he *continued* to prescribe controlled substances to his former girlfriend, now wife, to his stepson and to extended family.
- That [he] owns and operates a solo private medical practice in McMinnville, Tennessee. That on or about *July 2016*, as part of an investigation conducted by the Department, [he] admitted that his practice constituted a “pain management clinic” ... and that he was *knowingly* operating without certification as a pain management clinic as required by law.
- The from *at least 2010 to 2016*, [he] engaged in a pattern of prescribing narcotics and other controlled substances in amounts and/or for durations that may not be medically necessary, advisable or justified for a diagnosed condition and/or not for a legitimate medical purpose; without obtaining, performing and/or recording an appropriate history, physical examination or diagnostic work-up; without obtaining appropriate specialist consultations; without attempting alternative non-narcotic modalities; without documenting appropriate written treatment plans; without

appropriately monitoring for or responding to evidence of substance abuse on the part of patients; and without performing queries of the Controlled Substance Monitoring Database, all required by law[.] ... While the amounts and morphine equivalence of the drugs prescribed by [him] were not extraordinarily high, the records were utterly devoid of physical examination, diagnostics, or other details to justify the prescribing of controlled substances.

- That [his] staff scheduled patients' appointment times ... in five minute increments and [he] saw up to *eighty (80) patients per day* and that he billed TennCare for up to *thirteen (13) hours of patient visits per day*. . . [He] *admitted* to investigators that he does not perform appropriate examinations of patients.
- That [he] was in the *top ten* of high volume prescribers among counties with a population of less than 50,000[.]
- That [he] was recently hospitalized for approximately one week, during which time he signed refill prescriptions for up to one hundred patients *without a visit or examination*.
- That upon discharge from the hospital, the providers noted that [he] *suffered from serious cognitive deficits* likely due to vascular dementia.⁴⁰

318. While Store 10815 may have filled its last of Dr. Morgan's controlled substance prescriptions on the same day in February they were told he was going to surrender his medical license, at least five other Walgreens pharmacies, all of which were between thirty and ninety minutes away from McMinnville, continued filling—meaning either no warning had gone out regarding Dr. Morgan's license, or those pharmacies filled despite having knowledge of this.

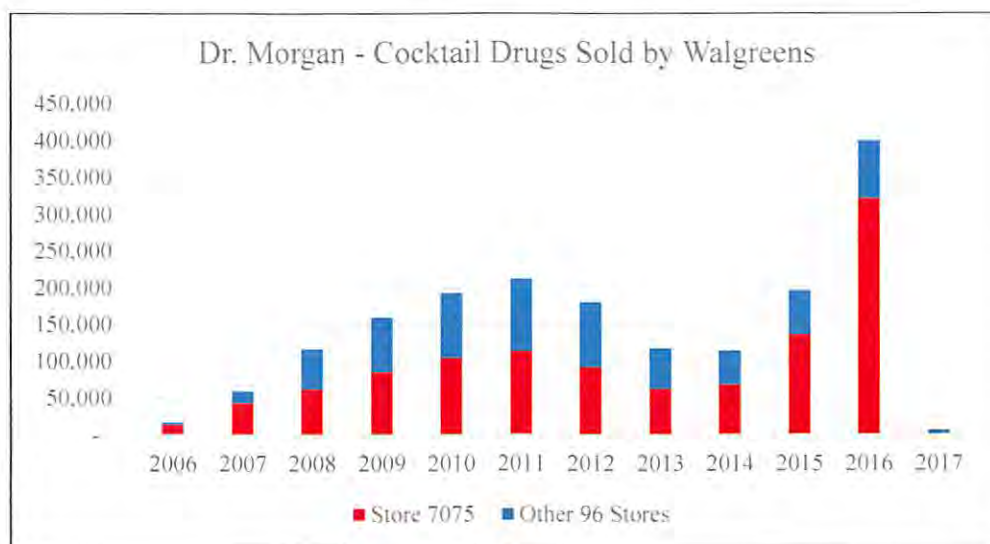
319. Astoundingly, despite being copied on both of the March 13 emails, Store 09208 filled at least two more prescriptions for controlled substances written by Dr. Morgan, one on March 17 and another on March 18.

320. Between October 4, 2015, the day after pharmacist Potter sent the red flag email, until March 18, 2017, thirty-six different Walgreens pharmacies sold nearly *half a million* more

⁴⁰ Emphasis added.

opioids and benzodiazepines prescribed by Dr. Morgan.

321. But what was most shocking was that Store 7075—the initial whistleblower in October 2015—had a massive spike in filling Dr. Morgan’s cocktail prescriptions in 2016, *more than doubling* the volume filled in the previous year. If anything, Walgreens forcing the Store to continue using the GFD policy had the opposite effect of its supposed goal.



322. This result is unsurprising considering Walgreens’ primary motivation was profits, as illustrated by a December 2015 report which showed that Walgreens’ calculated total revenue potential for Dr. Morgan was \$1.7 million.

323. Walgreens’ own internal records confirmed many of these red flags about Morgan. For instance, it knew that patients were traveling from states such as Alabama, Illinois, Indiana, Georgia, Kentucky, Michigan, Missouri, North Carolina, South Carolina, Texas, and West Virginia—including some from as far as 15 hours away—just to see this family care doctor in McMinnville, Tennessee.

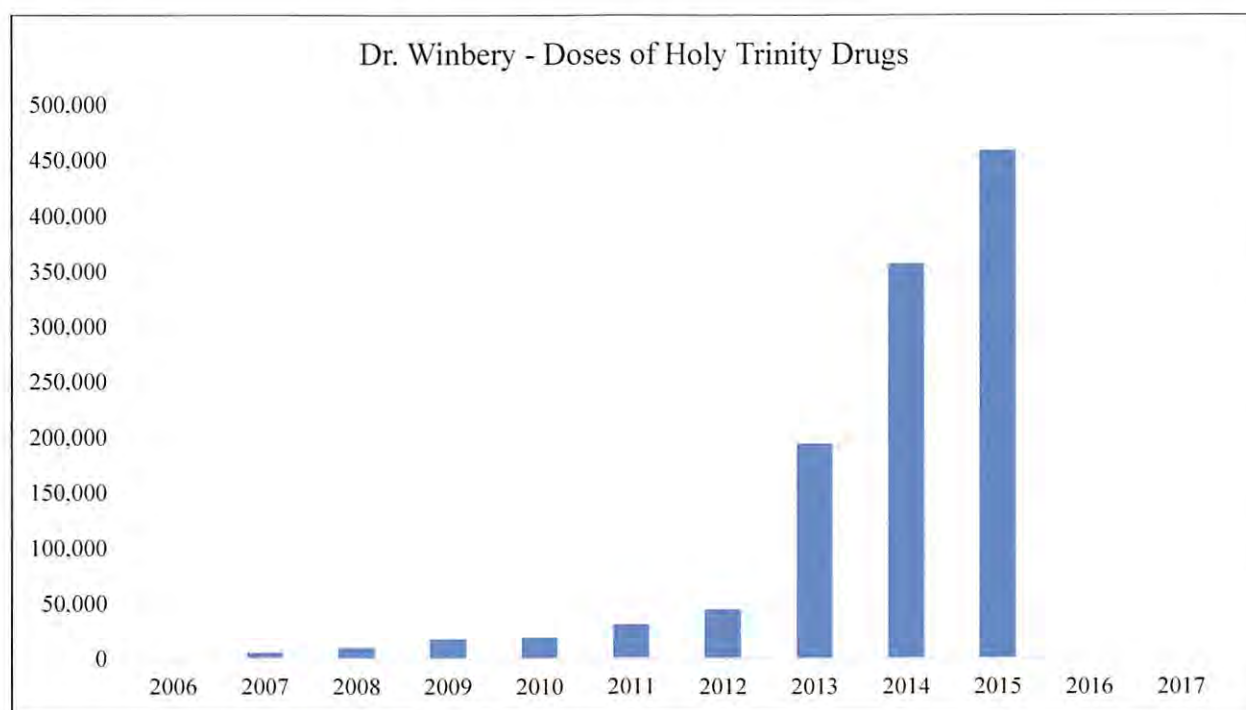
324. In total, 97 different Walgreens from across 38 different counties all over Tennessee sold approximately 1.8 million doses of cocktail drugs prescribed by Dr. Morgan, 84% of which were opioids. Store 7075 dispensed well over half, approximately 1.1 million, of these cocktail

doses, 68% of which were filled by just two pharmacists at that location.

Dr. Stephen Winbery

325. Dr. Stephen Winbery, an internist in Memphis, Tennessee, was another high-volume prescriber that Walgreens filled prescriptions for long after it knew of red flags regarding his practice.

326. Between August 2006 and April 2017, *seventy-six* different Walgreens pharmacies dispensed almost *1.2 million* doses of cocktail drugs, and astoundingly 40% of that was sold in 2015 alone. Sixteen percent of those prescriptions were paid for in cash—double the red flag of about 8%.



327. Dating back to at least 2013, Walgreens' internal documents showed that Dr. Winbery was in the 100th percentile among the National Top Prescribers of all controlled substances, and Walgreens included him on its Sanctioned Prescriber list. This timing is unsurprising, given that from 2012 to 2013, the number of cocktail drugs he prescribed that

Walgreens was filling increased by 335%.

328. Notably, Walgreens' definition of "top prescribers" meant that as to volume of controlled substance prescriptions, a prescriber was among the "worst":

His specialty is Family Medicine. He definitely fits our definition of a Top prescriber (i.e. worst) across the entire Walgreens chain.

329. Walgreens got a more direct warning about Dr. Winbery on January 31, 2014, when the Pharmacy Manager of Store 03473 emailed the following to Maureen Esposito, a Walgreens district pharmacy supervisor for Memphis:

From: Pharmacy Manager 03473 [<mailto:rxm.03473@store.walgreens.com>]
Sent: Friday, January 31, 2014 3:41 PM
To: Esposito, Maureen
Subject: Doctor Complaint

Maureen-

Dawn and I called the Board this morning and logged a complaint on a Dr. Stephen Winbery. We are having a problem with the massive amount of pain meds, especially oxycodone, that he is writing for with bogus diagnosis codes. For example, he prescribed oxycodone for a patient saying that he had COPD. The patient was young and on no COPD medications so we refused to fill it. That is just one of many examples. I just wanted to let you know about the problems we were having with him and about the complaint that we put in today.

If there is someone else with Walgreens that we should let know about this issue, please feel free to forward my email or I can send the information on to someone else.

Thanks,

Melanie

330. Ms. Esposito then forwarded the email to Ms. Daugherty, saying "FYI...not sure if we need to run a report on this MD..."

331. However, the pharmacist's warning was never circulated to the other Walgreens pharmacists.

332. Ms. Daugherty sent back a report to Ms. Esposito on February 3. Among other things, the report showed that at least 52% of the overall prescriptions Dr. Winbery wrote were for a controlled substance, and that he ranked high for Walgreens stores in alprazolam, hydrocodone, and carisoprodol—also known as the holy trinity.

From: Daugherty, Patricia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=WALGREENS.ONMICROSOFT.COM-54052-DAUGHERTY, PATRICIA M. (F1120697)]
Sent: 2/3/2014 9:07:29 AM
To: Esposito, Maureen [maureen.shorter@walgreens.com]
Subject: FW: Doctor Complaint

Hi Maureen,

See the prescribers stats below for our stores. We filled 1212 controls for this prescriber in the last 3 months, 769 were for opiates. I looked at some outside data we have also from other pharmacies including ours and he wrote for about 2460 control scripts in the last 3 months out of 4708 total scripts – note this may not be total numbers since the data we have does not include every single pharmacy out there. He seems to rank high for our stores in Alprazolam and Hydrocodone and note there's some Carisoprodol below also so we should remind our stores of cocktail scripts. It sounds like the store did the right thing below in turning away the script and please remind them to continue to follow GFD and watch for red flags. They can also fax the DEA when they refuse these scripts even if they are not target drugs as it may assist in getting the DEA involved and start investigating his practice, if they haven't already.

Thanks
Patty

333. Ms. Daugherty's email also included "Prescriber Ranking Results," which showed that Dr. Winbery was in the overall 100th percentile for all CII drugs, all controlled substances, alprazolam, and hydrocodone, in the 97th percentile for carisoprodol, and that 100% of the hydromorphone he had prescribed was paid for in cash.

334. Walgreens started 2013 by dispensing almost 9,000 doses of cocktail drugs in January prescribed by Dr. Winbery. By December that monthly number had jumped to 30,834.

335. Just a few short months later on April 21, 2014, yet another pharmacy manager emailed Ms. Esposito to raise concern:⁴¹

I'm having some reservations regarding an MD. The MD is Stephen Winbery DEA#[]. We might want to consider having Patty [Daugherty] look and see if a cautionary comment is warranted.

336. Again, Ms. Esposito forwarded the warning to Ms. Daugherty, saying:

I have had a complaint before about refusing to fill for a pt due to this physician. A lot of our pharmacist in D[istrict] 111 and D[istrict] 36 are refusing to fill due to writing high quantities of the same drug for every patient and in combination with Benzo+Soma [(carisoprodol)]. Can you pull the historical report for this physician

⁴¹ Emphasis added.

to see if you see any trends to support this?⁴²

337. Later that day, Ms. Daugherty responded to Ms. Esposito's email, and reported that:

Hi Maureen,

This prescriber's specialties are Emergency and Internal Medicine.

I reviewed IMS data which includes some other chains and independents dispensing data. Dr. Winbery wrote for about 5775 scripts in a 90 day period 12/13-2/14. 2,910 of those scripts were controls, so roughly 50% controlled. Concerning also that 944 of those control scripts were for cash. Our stores filled about 47 Carisoprodol and 387 Alprazolam scripts in the last 90 days. They also filled 573 hydrocodone scripts and 454 Oxycodone scripts. The overall unit volume per script is also on the high end from both our stores dispensing data as well as the data I accessed from IMS. Our stores filled about 1,707 total control scripts in the last 90 days, note this is not the exact same time period that we have in IMS as ours is more up to date. I would agree that our stores should continue to refuse cocktail scripts or unusually large doses for new patients, patients that have no established treatment plan or appropriate diagnosis to support the higher qty using the pharmacist professional judgment. Additionally, writing for the same quantities and drugs for all his patients, or families, etc. is also a red flag and our pharmacists must either try to resolve this script by script or refuse to dispense when appropriate. You can decide as a district to refuse this prescriber or you can also send out a general warning to your stores if you prefer. If you want to discuss further though feel free to call. I would just remind you to be careful about any communication reiterating to our stores that they cannot say anything to the patients about this prescribe should they refuse his scripts, ie. your Dr. is bad, the DEA is investigating your Dr., your Dr. writes for cocktails and DEA says cocktails are bad, etc.etc. Just making stuff up -but we want to make sure our pharmacists say the refusal is based on their professional judgment or they don't feel comfortable filling the script in their professional judgment. We don't need another Dr. accusing us of slander.

338. Among other things, this email highlighted the fact that a staggering 32% of Dr. Winbery's prescriptions for controlled substances were paid for with cash at Walgreens.

339. On May 6, 2014, the District Pharmacy Supervisor covering Memphis emailed Ms. Daugherty the following:

From: Estep, Rena [rena.estep@walgreens.com]
Sent: 5/6/2014 7:57:23 PM
To: Daugherty, Patricia [patricia.daugherty@walgreens.com]
Subject: RE: GFD

Hi Patty,

As you know we are buying Family Pharmacy in Memphis, which dispenses a high quantity of controlled substances written by Dr. Winbery. We plan to have a gfd refresher webinar for our team, do you have a presentation you could share with me?

Thanks

340. A short time later, on May 22, 2014, Ms. Esposito received another report from a

⁴² Emphasis added.

Memphis pharmacy regarding Dr. Winbery, which read:

From: "Bicknell, Denise" <denise.bicknell@walgreens.com>
Date: May 22, 2014 at 10:56:59 AM CDT
To: "Esposito, Maureen" <maureen.shorter@walgreens.com>
Subject: Dr. Winbery

Saria, Dr. Winbery's nurse called. Patients are calling them saying Walgreens will not fill their prescriptions. She said they have had problems in the past with patients getting ahold of prescription pads and writing prescriptions. What can she do to get Walgreens to fill their prescriptions? They are located in the Delta Medical Building at Getwell and Knight Arnold. #901-369-6000

341. Ms. Esposito then forwarded the email to Ms. Daugherty, asking her to "pull the data for this physician again" and said that "[t]he 3 Memphis supervisors would like to have a call with you discuss [sic] how to handle. *It is a reoccurring GFD question/concern in all our stores.*"⁴³

342. Ms. Daugherty responded by sending the exact same report she had sent a month earlier and noting that "[t]he #'s for this prescriber have not changed much[.]"

343. It was no wonder Walgreens was receiving warnings about Dr. Winbery's prescribing. Once again, the Company's own records confirmed the suspicious nature of the prescriptions it was filling. For example, one patient bought over 8,000 doses of cocktail drugs from Walgreens prescribed by Dr. Winbery from April 2013 to September 2014.

344. During the same time period, Walgreens filled 14 sets of holy trinity prescriptions written by Dr. Winbery for one patient alone:

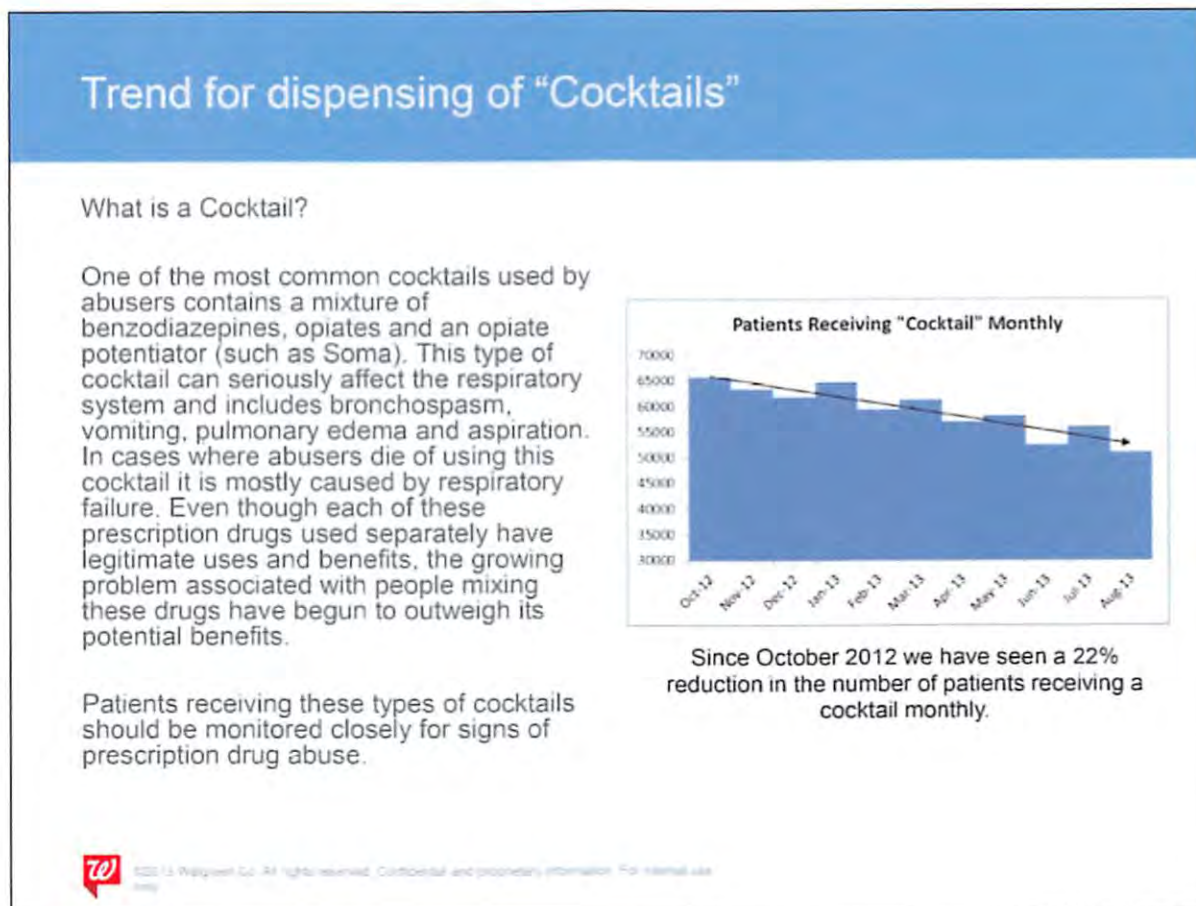
⁴³ Emphasis added.

DRUG NAME	SOLD DATE	QTY	DAYS'	RpH	RX NO.	STORE NO.
LIQUID HYDROCODONE	4/24/2013	240	24	1285997	3548094	7613
OXY/APAP 10MG/325MG	4/24/2013	150	25	1285997	3548096	7613
SOMA 350MG	4/24/2013	90	30	1285997	3548097	7613
XANAX 2MG	4/24/2013	30	30	1285997	3548095	7613
LIQUID HYDROCODONE	5/23/2013	240	24	1285997	3559991	7613
OXY 30MG	5/23/2013	120	30	1079233	3559989	7613
SOMA 350MG	5/23/2013	90	30	1079233	3559988	7613
XANAX 2MG	5/23/2013	60	30	1079233	3559990	7613
LIQUID HYDROCODONE	6/25/2013	240	24	1354515	3572609	7613
OXY 30MG	6/25/2013	150	25	1354515	3572604	7613
SOMA 350MG	6/25/2013	90	30	1354515	3572606	7613
XANAX 2MG	6/25/2013	90	30	1354515	3572608	7613
LIQUID HYDROCODONE	7/29/2013	240	24	1285997	3585416	7613
OXY 30MG	7/29/2013	150	25	1285997	3585428	7613
SOMA 350MG	7/29/2013	90	30	1285997	3585429	7613
XANAX 2MG	7/29/2013	90	30	1285997	3585419	7613
LIQUID HYDROCODONE	8/27/2013	240	24	1354515	3596823	7613
OXY 30MG	8/27/2013	180	30	1354515	3596827	7613
SOMA 350MG	8/27/2013	90	30	1354515	3596826	7613
XANAX 2MG	8/27/2013	90	30	1354515	3596825	7613
LIQUID HYDROCODONE	9/26/2013	240	24	1466784	1813812	6881
OXY 30MG	9/26/2013	180	30	1466784	1813814	6881
SOMA 350MG	9/26/2013	90	30	1466784	1813813	6881
XANAX 2MG	9/26/2013	90	30	1466784	1813811	6881
LIQUID HYDROCODONE	10/24/2013	240	24	1079244	3620366	7613
SOMA 350MG	10/24/2013	90	30	1079244	3620359	7613
OXY 30MG	10/25/2013	180	30	1354515	3620827	7613
XANAX 2MG	10/25/2013	90	30	1354515	3620822	7613
LIQUID HYDROCODONE	11/26/2013	240	24	1118886	3633726	7613
OXY 30MG	11/26/2013	180	30	1354515	3633458	7613
SOMA 350MG	11/26/2013	90	30	1354515	3633460	7613
XANAX 2MG	11/26/2013	90	30	1354515	3633478	7613
OXY 30MG	12/31/2013	180	30	1285997	3647059	7613
SOMA 350MG	12/31/2013	90	30	1285997	3647119	7613
XANAX 2MG	12/31/2013	90	30	1285997	3647062	7613
LIQUID HYDROCODONE	1/30/2014	240	24	1124323	3658670	7613
OXY 30MG	1/30/2014	180	30	1124323	3658674	7613
SOMA 350MG	1/30/2014	90	30	1124323	3658673	7613
XANAX 2MG	1/30/2014	90	30	1124323	3658672	7613
LIQUID HYDROCODONE	2/28/2014	240	24	1354515	3669972	7613
SOMA 350MG	2/28/2014	90	30	1354515	3669943	7613
OXY 30MG	2/28/2014	180	30	1354515	3669945	7613
XANAX 2MG	2/28/2014	90	30	1354515	3669973	7613
OXY 30MG	3/29/2014	180	30	1498920	1854223	6881
LIQUID HYDROCODONE	4/29/2014	240	24	1450265	1861099	6881
SOMA 350MG	4/29/2014	90	30	1498065	1861098	6881
OXY 30MG	4/29/2014	180	30	1498065	1861096	6881
XANAX 2MG	4/29/2014	90	30	1498065	1861097	6881
OXY 30MG	6/26/2014	180	30	1466784	1873761	6881
LIQUID HYDROCODONE	8/4/2014	180	18	1396716	1881753	6881
SOMA 350MG	8/4/2014	90	30	1396716	1881758	6881
OXY 30MG	8/4/2014	180	30	1396716	1881760	6881
XANAX 2MG	8/4/2014	90	30	1396716	1881754	6881
LIQUID HYDROCODONE	9/4/2014	240	24	1117706	1888578	6881
SOMA 350MG	9/4/2014	90	30	1117706	1888580	6881
OXY 30MG	9/4/2014	180	30	1466784	1888675	6881
XANAX 2MG	9/4/2014	90	30	1117706	1888579	6881

345. Most of the time, these potentially lethal cocktail combinations were dispensed on the same day, by the same pharmacist.

346. This went against Walgreens' purported policies, which regarded the holy trinity,

or cocktail drugs, as inherently suspect and high risk, as shown in at least one 2013 internal presentation, which warned that any potential legitimate benefit to this combination was being “outweigh[ed]” by “the growing problem associated with people mixing these drugs.” Notably, the slide also instructed that “patients receiving these types of cocktails should be monitored closely for signs of prescription drug abuse.”



347. That same presentation also showed that Walgreens was keeping close tabs on the “quantity, proportion of prescriptions dispensed and percent paid in cash across multiple categories” for its pharmacists, including a “GFD Opportunities Report” to identify which pharmacists likely needed additional training.

Identification of Pharmacists

Pharmacists show up in the tool based on quantity, proportion of prescriptions dispensed and percent paid in cash across multiple categories. These include Hydrocodone, Hydromorphone, Oxycodone, Methadone, Carisoprodol, Alprazolam, C2s and All Controls.

Pharmacists which appear in the 94th or higher percentile in 5 or more categories are included in the report. The resulting number of pharmacists which appear in the report is approximately 1% of all pharmacists.

Below is an example for one such Pharmacist.



Drug	Percentile	Sales	Rate	Quantity	Cash POC	Cash POC
ALPRAZOLAM	100	221	3 %	13,308	0 %	10 %
ALL CONTROLS	99	1830	24 %	211,005	3 %	10 %
HYDROCODONE	97	519	7 %	34,515	0 %	10 %
ALL C2 DRUGS	95	507	7 %	34,801	12 %	3 %
OXYCODONE	94	279	4 %	20,727	22 %	4 %



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348. The fact that Walgreens was tracking the number of monthly cocktails it was selling is further evidence that it knew for years that these were, and are, a very serious issue. Even if there was a slight downtrend in 2013, the prescription history of Dr. Winbery's patient, above, underscores that there were still tens of thousands of patients getting this highly dangerous, typically illegitimate combination of drugs from Walgreens on a regular basis.

349. Though Walgreens could observe red flags and received alarming reports about Dr. Winbery's questionable prescribing from at least 2013, it took longer for others to notice. On September 15, 2015, the DEA and DOJ's Organized Crime Unit raided Dr. Winbery's office and home, which was reported on by the local news. If Walgreens did not learn about the raid from the news reports, then the DEA's visit to Walgreens' Memphis stores should have set off internal alarms.

350. Within two days of the raid, Walgreens prepared a “Prescriber Report” in response to a request from the DEA. Among other things, this Report featured a chart which showed that, in the last five years, Dr. Winbery’s controlled substance prescriptions had been filled at 128 different Walgreens pharmacies, 52 of which were located outside of Tennessee, including Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, and even Walgreens across Texas, from Houston to Dallas to Baytown, as well as Amarillo, which is about 10 and a half hours away from Memphis. But no area was more saturated or lucrative than Memphis, where every single Walgreens within a thirty-minute radius filled a controlled substance prescription from Dr. Winbery.

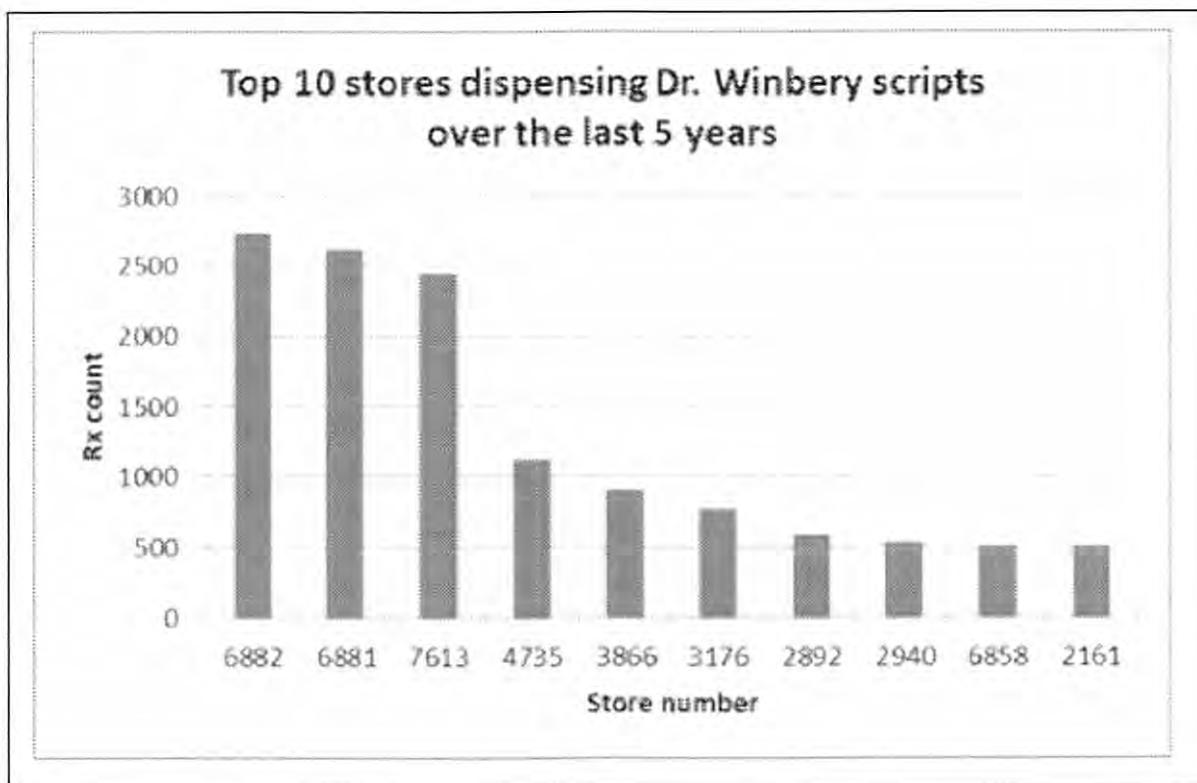
351. Rx Integrity circulated a shortened version of the Prescriber Report internally as well:

From: Tolva, Jeff
Sent: Thursday, September 17, 2015 8:52 AM
To: Bratton, Edward; Daugherty, Patricia; Stahmann, Eric
Cc: Polster, Natasha
Subject: RE: DEA in our stores

Attached is the data I pulled for **Dr. Stephen Winbery**. Based on the last 90 days, he’s considered a “high prescriber” as he is 96% or greater for more than 4 target categories:

target	overall_percentile
ALPRAZOLAM	100
ALL CONTROLS	100
ALL C2 DRUGS	98
OXYCODONE	97
HYDROCODONE	97
CARISOPRODOL	90
TRAMADOL	66
AMPHETAMINES-STIM	63
METHADONE	35
HYDROMORPHONE	35

And over the last 5 years, these are the Top 10 stores filling his scripts:



352. Walgreens knew of other red flags concerning Dr. Winbery. For instance, Walgreens knew it was filling controlled substance prescriptions written by Dr. Winbery for patients who came from at least twenty-six other states across the country, including Arkansas, Arizona, California, Colorado, Washington D.C., Hawaii, Iowa, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nevada, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, Washington state, and Wisconsin.

353. Walgreens' GFD policy did nothing to prevent or even slow down Walgreens' filling of Dr. Winbery's prescriptions for controlled substances, as evidenced by what was dispensed in just the remainder of that September—from the 15th (the day of the DEA raid) to the 30th, twenty-two different Walgreens pharmacies sold over 12,000 doses of cocktail drugs prescribed by Dr. Winbery.

Dr. James Pogue

354. Dr. James Pogue was another example of blatant over-prescribing aided by Walgreens. Dr. Pogue was a family doctor located in Brentwood, Tennessee. Between 2006 and 2016, no other health care professional in Tennessee prescribed more OxyContin (despite his not prescribing any tablets from 2013 to 2016 because his license was suspended). Walgreens' pharmacies regularly filled Dr. Pogue's opioid prescriptions, amounting to over 1.2 million ODUs, despite numerous red flags raised both from external sources and from within Walgreens' own internal documents.

355. Dr. Pogue first ran into trouble with the Board of Medical Examiners in September 2009. The Board issued a public consent order officially reprimanding him for injecting multiple patients with Human Growth Hormones to treat joint pain. Tellingly, the Board found that Dr. Pogue had preprinted his patient notes, including information about the patient's current health status, *before he examined the patient*. Dr. Pogue continued this practice when he prescribed opioids—the Board later found that from 2007 to 2010, Dr. Pogue “failed to take an appropriate history or perform a medically appropriate physical examination and/or failed to document such, requisite to justify prescribing or dispensing of narcotics . . . and controlled substances.”

356. Dr. Pogue's 2009 reprimand was accessible to the public and could be easily found, had Walgreens bothered to do due diligence.

357. Walgreens filled many inherently suspicious prescriptions, particularly for dangerous combinations of hundreds of doses of controlled substances, long before it took any steps to address Dr. Pogue's red flags. Overall, approximately 1.8 million doses of cocktail drugs prescribed by Dr. Pogue were dispensed by 106 different Walgreens pharmacies across Tennessee. Even the ratios for many of these drugs were inherently suspicious—75% of the oxycodone

prescribed was Oxy 30, the most highly abused form of oxycodone on the market, and 70% of the alprazolam, or Xanax, that was sold was the highest strength available. Furthermore, at least 15 different Walgreens pharmacies combined dispensed almost 130,000 opioid doses prescribed by Dr. Pogue to out-of-state patients, including ones from as far as Eugene, Oregon (36 driving-hours away), as well as Arizona, Colorado, Illinois, Kentucky, Louisiana, Michigan, Texas, Virginia, and West Virginia.

358. Between September 2010 and November 2012, Walgreens co-dispensed cocktail drugs at least 25 times to one of his patients, totaling approximately 4,800 Oxy 30s, 1,000 fentanyl 400mcg lollipops, 2,900 OxyContin 80mg, and 3,100 alprazolam 2mg. These 11,718 doses totaled almost 619,000 MMEs and were worth almost \$400,000 on the black market.

359. Another patient presented in May 2010 with prescriptions written by Dr. Pogue for 540 methadone 10mg, 120 carisoprodol 350mg, 30 alprazolam 2mg, and 120 Oxy 30s, another holy trinity cocktail which Walgreens filled in full.

360. In yet another example, Store 6409 in Brentwood filled a *one-day* prescription for 300 Oxy 30s for one of his patients on January 3, 2012. This patently absurd and dangerous prescription equaled 13,500 MMEs, which is *150 times more* than the CDC's recommended daily ceiling and would also have an estimated street value of \$9,000. This patient was also receiving the holy trinity of Oxy 30, alprazolam, and carisoprodol, all written by Dr. Pogue and filled by the Brentwood Walgreens.

361. A short time later, on May 16, 2012, a Nashville CBS-affiliate released a troubling news story about Dr. Pogue titled "Undercover Pain Clinic Video Shocks Lawmakers." Undercover footage of Dr. Pogue's clinic, where he was the only doctor on staff, showed patients waiting in lines outside the door and into the parking lot, waiting up to 9.5 hours to see the doctor,

sharing pills, and people in the clinic's parking lot snorting crushed pills. One woman who was interviewed told reporters that she would take the coating off the opioid pills and crush them up with a hammer in order to abuse them. Another woman, when asked about selling opioid prescriptions she filled from the clinic, said:

I'm fixing to hand over forty out of one hundred and fifty. So, basically I got to make a little money on Xanax and sh**. That's what I got to do, but you and me need to swap numbers because we can do a lot of business together . . . I got probably fifteen, twenty people I deal with, back and forth. We all go at different times we always got something and nobody's sick.

362. Another woman was worried about a loved one to whom Dr. Pogue prescribed 180 OxyContin pills and 180 oxycodone pills every month for the last year. "How in the world can a doctor, with a license, feel good about giving a man that kind of medication?" she asked. The investigative reporters learned all this information from simply observing the clinic and interviewing people waiting outside.

363. Walgreens' own internal documents flagged Dr. Pogue as a prolific opioid prescriber. In an internal report of frequent opioid prescribers from August to October 2012, Dr. Pogue was in the top 200 oxycodone prescribers *in the country*. During that brief period, Dr. Pogue prescribed 42,062 oxycodone tablets, an average of over 14,000 pills a month, that were dispensed by Walgreens.

364. In October 2012, Walgreens received more cause for concern regarding Dr. Pogue, in the form of a subpoena to one of its Nashville pharmacies from the Department of Health concerning certain prescriptions written by him.

365. The Board of Medical Examiners suspended Dr. Pogue's medical license the next month because his opioid prescription practices violated Tennessee law and constituted gross medical malpractice.

366. Walgreens hired Pharma Compliance Group ("PCG"), a third-party vendor

comprised of former DEA diversion investigators and special agents which audited pharmacies, to conduct due diligence site visits of the top controlled substance prescribers. On November 2, 2012, PCG visited Dr. Pogue and his clinic, Belmont Medical Group, where they found numerous red flags, including that he had previously been disciplined. Investigators noted that the clinic walls were “littered with flyers and posters referencing doctor shopping, Medicaid fraud and informing patients in the waiting room that they [were] under CCTV surveillance.” They also found that the clinic had “Cash Only” signs and a security guard on site, in addition to other security measures. The investigator’s report even included the following comments from one of the Walgreens pharmacists who dispensed Dr. Pogue’s prescriptions:

*The MD is patient/customer of the store; He only writes for Oxycodone/Lortab/Xanax; [pharmacy staff] tell all of [his patients wanting Oxycodone they are out and will not fill; In the event one does get filled there will be a line of patients wanting Oxycodone soon afterwards; Rachel Kimball RN is his nurse/office manager/wife; He writes Rx for her sometimes, but she usually gets Soma and Xanax from Dr Asia. Pharmacy staff believes her to be impaired.*⁴⁴

367. Walgreens received a report, indicating that Dr. Pogue was operating a pill mill, on November 18, 2012 but stores continued to fill controlled substance prescriptions written by him.

368. Dr. Pogue’s medical license was finally suspended on November 28, 2012. In the Agreed Order, the Tennessee Board of Medical Examiners found that between 2007 and 2010 Pogue prescribed controlled substances “when the quantity, duration and method was such that the persons would likely become addicted” and “when such prescriptions were not in the course of professional practice, not in good faith to relieve pain and suffering, or not medically necessary, advisable or justified for a diagnosed condition.”

369. It took Walgreens almost a week to circulate any sort of alert regarding the action. On December 4, 2012, the Nashville district pharmacy supervisor sent out an email, *but only to*

⁴⁴ Emphasis added.

Nashville Walgreens pharmacies, reporting that Dr. Pogue’s medical license was suspended and that the action renders “all refills for Controlled Substance prescriptions void.” Given the number of Walgreens pharmacies outside of Nashville filling his prescriptions for controlled substances, such warning was unreasonably limited.

370. Unsurprisingly, despite the December 4 email announcing Dr. Pogue’s suspension, multiple Walgreens pharmacies still filled Pogue’s prescriptions. Although his prescriptions were blocked due to an invalid DEA number, pharmacists overrode the block and filled his prescriptions anyways.

371. On February 12, 2013, the Board of Pharmacy sent two investigators to a Nashville Walgreens location, in part because the store was referenced in a NewsChannel 5 story about Dr. Pogue’s opioid prescription practices.

372. As another example of Walgreens’ failures of due diligence, consider that one Nashville Walgreens pharmacist filled more of Dr. Pogue’s prescriptions by pill count than any of its other pharmacists in Tennessee by a wide margin. Out of the 730 controlled substance prescriptions he or she filled for him, approximately 76% were for dangerous combinations of two or more of the cocktail drugs and roughly 19% of prescriptions were paid for in cash. And they certainly were not alone among Walgreens pharmacies in their dispensing practices.

373. In spite of the glaring red flags that Dr. Pogue was prescribing opioids and other controlled substances for illegal or improper purposes, Walgreens pharmacies continued to fill, and profit from, his prescriptions.

Dr. John Paffrath

374. Another high-volume prescriber who should have raised suspicion was Dr. John Paffrath, a dentist with a practice located in Erin, Tennessee, a small town with a population of

approximately 1,300. Given the small population he was serving and the fact that he was a dentist, his high volume of opioid prescriptions should have seemed especially suspect.

375. In May 2012, Dr. Paffrath's dental license was suspended for 18 months—and his DEA license “permanently retired”—for prescribing “excessive amounts of controlled substances including Hydrocodone, Valium, Xanax, and Oxycodone” and keeping inadequate documentation of the prescribing of controlled substances. Prior to the surrender of his DEA license, Walgreens regularly filled controlled prescriptions written by Dr. Paffrath, including *opioid prescriptions for children as young as two or three*.

376. The largest prescription of Dr. Paffrath that Walgreens filled was in 2011 for a *three-year-old* who was prescribed a 30-day course of 225 MMEs per day. Generally, the recommended maximum daily dose of opioids for *adults* is 90 MMEs. Thus, this toddler was ostensibly receiving roughly 2.5 times the recommended maximum daily dose of opioids for adults for a thirty-day period. It is difficult to conceive of a legitimate reason for such a prescription.

377. The prescription for this three-year-old was one of many opioid prescriptions Walgreens filled for dental patients of Dr. Paffrath who were nine years old or younger. Only two of those prescriptions for children were for doses under 90 MMEs per day. Seventy-three percent of these young patients received from Walgreens 150 MMEs or more per day, and 33% received over 200 MMEs per day. Seventy-five percent of his child patients came from two hours away or more to see Dr. Paffrath in Erin. Notably, many of these patients were from much more populated areas than Erin, such as Murfreesboro and Clarksville.

378. Dr. Paffrath's suspicious prescribing patterns were not limited to young children. In February 2010, one of Dr. Paffrath's adult patients drove approximately 13 hours from LaBelle, Florida to see him. The patient then filled their opioid prescription from Dr. Paffrath at a

Walgreens 4 hours away in Knoxville. Another patient from Franklin, Tennessee, drove 90 minutes to see Dr. Paffrath, who prescribed him a total of 660 benzodiazepine (and nothing else), dispensed by Walgreens.

379. Twenty-five different Walgreens ultimately dispensed a combined 33,581 doses of cocktail drugs prescribed by Dr. Paffrath before he lost his DEA license, enough for every resident of Erin to receive 26 doses of cocktail drugs. The average number of opioids Walgreens filled for Dr. Paffrath was 127 doses per prescription.

Nurse Practitioner Geoffrey Peterson

380. Nurse Practitioner Geoffrey Peterson was another high-volume prescriber practicing in a small Tennessee town. Peterson was a family nurse practitioner and ran Holistic Health and Primary Care in Hixson, a town of roughly 37,000 people.

381. He was a Walgreens top-100 prescriber of opioids in *the country* in 2012. He was also among the top 50 opioid prescribers in Tennessee, based on morphine milligram equivalents, from April 1, 2013 to March 31, 2014.

382. When informed that he was in the top 50, NP Peterson responded in a letter indicating he had no intention of decreasing his controlled substance prescribing. Walgreens consistently and continuously filled NP Peterson's opioid prescriptions despite internal warnings that he had previously worked at several pill mills, media coverage of his multiple arrests and DEA raids on his clinic, and suspensions of his nursing license.

383. In 2011, NP Peterson worked at Superior One Medical Clinic ("Superior One") in Chattanooga, a clinic that would later be characterized by a federal prosecutor as "a 'pill mill,' a location where individuals could easily obtain prescriptions for powerful pain killers such as oxycodone with little or no documented need." The prosecutor described armed guards patrolling

the clinic's parking lots and customers abusing and/or selling their prescriptions. The Board of Nursing, in a 2015 Agreed Order suspending NP Peterson's license, found that he wrote prescriptions at Superior One for CIIIs "for [which there was] no medical necessity."

384. NP Peterson was subpoenaed to testify in a criminal case against a fellow prescriber from the Superior One clinic (and another Walgreens top opioid prescriber, Nurse Practitioner Charles Larmore) in November 2014. NP Larmore and two laypeople faced 66 federal criminal charges, largely stemming from the illegal distribution of controlled substances at Superior One. NP Peterson asserted his 5th amendment right against self-incrimination instead of testifying. NP Larmore and others eventually pled guilty, and he lost his nursing license.

385. Despite clear evidence that NP Peterson was working at a pill mill, he was able to move on from Superior One (when it was shut down in July 2011 by the DEA) to work at his father's clinic Holistic Health and Primary Care.

386. On November 5, 2012, a PCG investigator conducted a site visit of Holistic Health. He noted several red flags concerning NP Peterson and his practice: the building was run down, people were loitering outside, the line to see a medical professional stretched to outside the office, and the interior of the office was also unkempt. Most concerning, the investigator noted that "the prescriber [NP Peterson] was not documenting his NPI [(National Provider Identifier)] number on the hard copy of the prescription." This would make it difficult to track NP Peterson's prescriptions. The same year that NP Peterson was a Walgreens top 100 prescriber, Walgreens received this report and subsequently took no action.

387. A local Walgreens pharmacist also raised serious concerns about NP Peterson that went unheeded. In a Walgreens pharmacy compliance survey from February 2013, the pharmacist in charge ("PIC") of Store 3535 answered "yes" to the question of whether she had previously

refused to fill prescriptions for certain prescribers. She only named Holistic Health and noted that:

*the main drugs this FNP prescribes are control substances and the patients have a history of doctor shopping (according to the data base search) and they write for multiple immediate release narcotics and no extended release. The prescriber has also worked at several other “pain” clinics that have been closed down by the DEA. They also claim to be primary care and they never prescribe antibiotics or any other maintenance or acute medications besides control substances. the patients also have addresses that are sometimes over 50 miles away and/or out of state.*⁴⁵

388. The PIC’s list reads like DEA Red Flags of Diversion 101, but her comments were never disseminated to other Walgreens in the area, nor did Walgreens instruct her to stop filling his prescriptions. Store 3535 continued to fill opioid prescriptions written by NP Peterson in 2013, and its filling rate actually increased almost *nine-fold* from 2013 to 2014.

389. Walgreens’ paltry due diligence on NP Peterson only scratched the surface of his illegal and unhinged prescribing practices. On December 19, 2014, Sequatchie County Sheriff’s Department executed a search warrant on NP Peterson’s home based on numerous complaints of animal abuse. Officers discovered 52 animals living in deplorable conditions and the bodies of three dogs and an opossum in NP Peterson’s kitchen freezer.

390. Police also found vials of morphine, prefilled syringes of morphine, a bottle of prednisone, a bottle of animal morphine, and shopping bags filled with used needles in his home. The syringes of morphine had no identifying prescription information. NP Peterson was charged with one count of felony possession of a CII substance, along with multiple counts of aggravated cruelty to animals, in Sequatchie General Sessions court.

391. The next day, McKamey Animal Services, in an unrelated investigation, visited NP Peterson’s clinic after receiving complaints that three emaciated dogs were being kept in the clinic’s examination rooms. The animal services officer smelled a strong odor of urine and feces

⁴⁵ Emphasis added.

before he even stepped inside the clinic. Once inside, the officer found three starving dogs separately housed in each of the clinic's exam rooms. The exam room floors were covered in urine stains and feces. Several patients arrived while the officer was still at the clinic, each expecting to be seen by NP Peterson.

392. Local media quickly picked up the story, with the Chattanooga Times Free Press publishing an article on December 24, 2014, titled "Suspected dog hoarder Geoffrey Peterson may have had more canines in other sites". Holistic Health was specifically named within the first few paragraphs, along with reporting that three dogs were rescued from the site.

393. Along with being investigated for animal cruelty, NP Peterson became the subject of a Department of Health ("DOH") investigation based on complaints against his nursing license. On January 12, 2015, a DOH official attempted to investigate NP Peterson's hormone replacement clinic, located next door to Holistic Health. NP Peterson responded by locking the clinic door and screaming obscenities at the investigator. The investigator also tried to audit Holistic Health, but NP Peterson denied the investigator access and refused to cooperate.

394. The same day, the DOH official attempted to interview NP Peterson's supervising physician of record, his 88-year-old father Dr. Walter Peterson. Due to serious safety concerns, including knowing that Geoffrey Peterson owned a firearm and his previous hostile behavior, the DOH official had a Hamilton County Sheriff's Department detective accompany him to Dr. Walter Peterson's house. Before they could determine whether Walter Peterson was home, NP Geoffrey Peterson arrived at the property and began banging his fist on the driver's side window. NP Peterson screamed profanities at the officials and ordered them to leave the property. The Chattanooga police, at the request of the Hamilton County sheriff, attempted to do a welfare check on Dr. Walter Peterson right after, but no one answered when the police officer knocked.

395. Throughout the rest of January 2015, multiple agencies attempted to conduct a welfare check on Dr. Walter Peterson. The Chattanooga police department sent two patrol cars, but a neighbor alerted NP Peterson and he stated that no one would be allowed on the property without a warrant. NP Peterson obstructed multiple agencies' attempts to check on his father's health, including that of Adult Protective Services. Finally, on January 23, 2015, a local agency obtained a warrant to check on Dr. Peterson. He was in such poor condition that he was immediately transported to the hospital. The Hamilton County issued an arrest warrant for NP Peterson for willful neglect and abuse of an adult. Dr. Peterson was not in any condition to take care of himself, let alone supervise his son's opioid prescribing practices.

396. Also on January 23, 2015, the DEA raided the Holistic Health clinic and NP Peterson's hormone replacement clinic. The Chattanooga Free Press Times covered the raid the next day, publishing an article titled "DEA raids hormone clinics run by Hixson man accused of dog hoarding." The article revealed astonishing information about NP Peterson's opioid prescribing. After analyzing his prescribing patterns from a ProPublica database, the journalists determined that 92% of his patients filled a prescription for a CII during 2012; other nurse practitioners in Tennessee, on average, only prescribed those drugs to 14% of their patients.

397. The Times also interviewed a former patient of NP Peterson's, and he was convinced that NP Peterson was operating a pill mill. *"All you have to do is tell him what you want and he'll write you a prescription for that,"* the former patient said.⁴⁶ He told journalists that many people paid in cash for their prescriptions, and that some pharmacies had refused to fill his prescriptions from Holistic Health. Despite the stark red flags, Walgreens continued to fill NP Peterson's opioid prescriptions without breaking stride.

⁴⁶ Emphasis added.

398. NP Geoffrey Peterson's illegal and erratic actions came to a head on January 27, 2015 when the Tennessee Board of Nursing entered an emergency order temporarily suspending his nursing license. The Board emphasized the horrifying conditions at Holistic Health with NP Peterson keeping emaciated dogs in the clinic and him ultimately being charged with neglect of his supervising doctor/father Dr. Walter Peterson. The Board concluded that NP Geoffrey Peterson's "impaired judgment combined with the high amount of controlled substances he prescribes and unsanitary conditions of his practice create *an extreme and untenable danger to his patients and the public of Tennessee.*"⁴⁷ Emergency action was deemed justified because Peterson's actions "constitute a serious and immediate danger to the public's health, safety and welfare."

399. Even though NP Peterson's license was suspended January 27, 2015, a Walgreens in Cleveland, Tennessee still filled a prescription for OxyContin 30mg that he wrote on January 28. Though Walgreens did not fill controlled substances from NP Peterson after that, NP Peterson likely stopped prescribing them because he was *a fugitive from justice*. He failed to appear after being released on a \$10,000 bond from his December 2014 animal cruelty and drug possession charges. Chattanooga police were unable to locate him to arrest him for his January 2015 charge of neglect of an adult. NP Peterson was a fugitive until March 2, 2015 when he turned himself in to local authorities.

400. On August 7, 2015, the Tennessee Board of Nursing entered a Consent Order suspending NP Geoffrey Peterson's nursing license. The Board reiterated that NP Peterson's prescribing actions constituted a danger to the public's health and safety. They emphasized that "in order to support "Tennessee Department of Health's ongoing battle against prescription drug

⁴⁷ Emphasis added.

abuse and overprescribing... [NP Peterson's suspension] is necessary due to Respondent's haphazard and unprofessional prescribing practices and actions."

401. The Board also found that, based on an examination of a sample of NP Peterson's patient records from March 2012 to December 2013, NP Peterson "typically prescribed opioids in amounts not medically necessary" and failed to establish treatment plans for patients that did not include controlled substances.

402. Despite the Board of Nursing suspending NP Peterson's license twice, Walgreens repeatedly continued to fill his prescriptions. In a Prescriber Ticket spreadsheet, a Walgreens employee from Store 3536 reported on November 14, 2015, that "TN nurse practitioner license [for NP Geoffrey Peterson] was suspended 1/27/2015, but rxs are still processing."

403. Geoffrey Peterson primarily practiced in the town of Hixson, whose current population is roughly 37,000 people. Despite its small size, Walgreens' own internal documents identified a Hixson store as being *the third largest store nationally based on Schedule II controlled substances*. Walgreens stores ultimately sold 17,400 controlled substance tablets for Geoffrey Peterson's patients and were paid \$56,550, despite the glaring red flags from at least 2011 that Peterson was engaged in illegal prescribing. Filling these prescriptions helped fuel the flood of opioids into this small town.

Nurse Practitioner Charles Larmore

404. Charles Larmore was NP Peterson's colleague at the Superior One pill mill and a prolific prescriber of opioids in his own right. Larmore was also a nurse practitioner and owner of Primary Care and Pain Clinic ("Primary Care") in Chattanooga, Tennessee. NP Larmore was in the top 100 of Walgreens prescribers of opioids nationally in 2012. According to evidence presented at his sentencing hearing for illegal opioid distribution, NP Larmore was among the *top*

12 opioid prescribers in Tennessee.⁴⁸

405. On November 2, 2012, per Walgreens' policy for top opioid prescribers, a PCG investigator attempted to do a site check on NP Larmore's clinic, Primary Care.

406. The visit was too little, too late—the investigator's only note was that the practice had been closed since September 2012, when the prescriber was indicted by a federal grand jury for unlawfully distributing and dispensing controlled substances. By the time Walgreens bothered to conduct due diligence on NP Larmore, he had already prescribed 2 million doses of controlled substances, which amounted to over *100 pounds* of oxycodone. Walgreens alone had already dispensed about 133,000 doses of opioids prescribed by NP Larmore.

407. In December 2010, NP Larmore was hired by two laypersons, one being the notorious opioid dealer Barbara "Aunt Bea" Lang, to write controlled substance prescriptions at the Superior One clinic in Chattanooga.

408. In its 2014 order revoking NP Larmore's nursing license, the Tennessee Board of Nursing found that at Superior One "prescriptions for controlled substances were routinely written outside the course of professional practice and not for a legitimate medical purpose." The conditions of Superior One laid out by the Board, which NP Charles Larmore stipulated to in the Consent Order, highlighted the staggering evidence that Superior One was a pill mill. According to the Board, "*Superior One developed a reputation as a place where controlled substances could be easily obtained.*"⁴⁹ Controlled substances were prescribed to almost all of Superior Clinic's patients, and patients often traveled long distances to be seen by NP Larmore.

409. Despite patients having physical and/or behavioral signs of drug abuse, admitting

⁴⁸ <https://www.justice.gov/usao-edtn/pr/chattanooga-doctor-and-nurse-practitioner-sentenced-federal-prison-pill-mill-case>.

⁴⁹ Emphasis added.

to abusing drugs obtained from Superior One, failing drug tests, and being caught abusing and/or distributing drugs at the clinic, NP Larmore continued to prescribe significant amounts of controlled substances to patients. He wrote prescriptions not based on a medical diagnosis but based on the patient's request. Several patients were even part of *prescription pill distribution rings*, in which "pill brokers" paid for patients' clinic visits and prescriptions in exchange for a portion of the pills the patients received. The Board of Nursing found that NP Larmore was aware of the illegal activity but continued to prescribe controlled substances to the patients associated with the distribution rings as well as the pill brokers themselves.

410. Superior One's day to day operations were also highly indicative of illegal opioid prescribing. The clinic operated as a cash-only business and would see up to one hundred patients per day. Patients were seen on a first come, first served basis (rather than scheduling appointments), and wait times could be up to 8.5 hours. The clinic itself ran promotional schemes to increase business, including offering a free office visit to any patient who referred ten patients to the office. Superior One staff members were also known to coach patients on how to avoid law enforcement.

411. Superior One closed in July 2011, having made over \$2 million in revenue over the course of 7 months. Superior One's staggering prescription numbers are matched in Walgreens' dispensing data for NP Larmore. From 2006 to 2010, or pre-Superior One, Walgreens sold just 7,472 opioid doses prescribed by Larmore. In 2011, that number had jumped by 722% to 61,397 doses. Larmore and Peterson's pill mill was open for business, with an assist from Walgreens.

412. The month after Superior One closed, NP Larmore opened a new clinic, Primary Care. Most of Superior One's patients followed him to Primary Care, and Primary Care's prescribing practices largely mirrored the previous pill mill. Although Primary Care had a policy

requiring medical proof to document patients' pain, NP Larmore and the other prescribers at the clinic ignored that policy. He continued to write large prescriptions for controlled substances despite his patients' histories of opioid abuse. He also increased patients' dosages without sufficient justification and prescribed dangerous combinations of controlled substances. The clinic drew many patients from out of state, including a large population of young people in no obvious pain.

413. Despite the many red flags, Walgreens continued to fill NP Larmore's prescriptions as he moved from one pill to another, and as he became one of the top opioid prescribers in the country. All that stopped Walgreens from continuing to support Larmore's devastating prescribing practices was a criminal prosecution.

414. NP Charles Larmore was named as a co-defendant in a 66-count federal criminal indictment on August 28, 2012, stemming from his prescribing practices at Superior One and Primary Care. On February 3, 2014, NP Larmore pled guilty to conspiracy to distribute and dispense, and causing to be distributed and dispensed, outside the scope of professional practice and not for a legitimate medical purpose, Schedule II, III, and IV controlled substances. He was sentenced to 13 years in prison and ordered to forfeit over \$375,000 to the federal government. NP Larmore's nursing license was revoked on May 14, 2014.

Dr. Christine Kasser

415. In another example of Walgreens failing to follow up when red flags were raised, Walgreens was alerted to suspicious prescriptions being filled at its Memphis pharmacies written by internist Dr. Christine L. Kasser.

416. Dr. Kasser was another top national prescriber, dating back to at least September 2013, when Walgreens gave her a score of 100 for "Prescriber Overall Rating." That same month,

another internal document showed that her prescriptions were being filled in at least 15 states and that 40% of the oxycodone she prescribed was for Oxy 30, a suspiciously disproportionate ratio—especially for an internist. Even more damning was that it stated that 70% of the prescriptions she was writing were for controlled substances.

417. In late November 2013, Walgreens was alerted to suspicious orders being filled at its pharmacies in or around Memphis written by Dr. Kasser. Walgreens’ Rx Integrity had concerns that Dr. Kasser was operating “her clinic [in] all cash,” that she was “seeing some of her patients virtually some months in between physical visits,” and that Walgreens was “fill[ing] a good amount of [Dr. Kasser’s] controlled substance prescriptions.”

Steve,
Can you pull the last 90 days of the stores and scripts counts for Dr Kasser, DEA AR1755074. Had a store remark on the possibility of her clinic being all cash, and her seeing some of her patients virtually some months in between physical visits. I think it would be good to pinpoint some stores and scripts that Maureen can go in and take a look at to see what going on since we fill a good amount of her controls, at least per IMS data.

418. Walgreens reviewed the data related to Dr. Kasser’s prescribing habits from August through November 2013, and the results were alarming:⁵⁰

DR CHRISTINE LEE KASSER: Control Scripts				
Year	Month	All Stores	Total Scripts	Total Qty
2013	8	39	108	7318
2013	9	60	346	26351
2013	10	66	372	27317
2013	11	56	223	16864

DR CHRISTINE LEE KASSER: Percent of Control Scripts						
Year	Month	All Scripts	Cntrl Scripts	% Cntrl Scripts	Non-Cntrl Scripts	% Non-Cntrl Scripts
2013	8	157	108	68.8%	49	31.2%
2013	9	480	346	72.1%	134	27.9%
2013	10	540	372	68.9%	168	31.1%
2013	11	334	223	66.8%	111	33.2%

⁵⁰ Original Walgreens charts. All PHI has been redacted.

DR CHRISTINE LEE KASSER: Top Drugs Dispensed			
drug_name	total_dspn	all_scripts	avg_dspn_qty
OXYCODONE 30MG IMMEDIATE REL TABS	8744	74	118
HYDROCODONE /ACETAMINOPHEN 10-325 T	7709	75	103
OXYCODONE/ACETAMINOPHEN 10-325MG TB	7153	64	112
METHADONE 10MG TABLETS	7005	48	146
OXYCODONE 15MG* IMMEDIATE REL TABS	2779	31	90
ALPRAZOLAM 0.5MG TABLETS	2487	37	67
BUPRENORPHINE 8MG SL TABLETS	2351	57	41
HYDROMORPHONE 4MG TABLETS	2165	25	87
CARISOPRODOL 350MG TABLETS	1965	21	94
LORAZEPAM 1MG TABLETS	1865	24	78
PROMETHAZINE W/CODEINE SYRUP (RED)	1680	7	240
ALPRAZOLAM 1MG TABLETS	1477	15	98
ALPRAZOLAM 0.25MG TABLETS	1380	26	53
OXYCODONE 10MG IMMEDIATE REL TABS	1295	11	118
OXYCONTIN 80MG CONTROLLED REL TABS	1259	8	157

419. The spreadsheet also included examples of problematic scripts written by Dr.

Kasser and filled by Walgreens:

pt_name	str_nbr	fill_sold_dt	drug_name	fill_qty_dspn	reason
PATIENT 1	6881	9/19/2013	METHADONE 10MG TABLETS	140	High Qty Cash Paid Scripts [sic]
PATIENT 2	6037	8/27/2013	BUPRENORPHINE 2MG SL TABLETS	120	
PATIENT 2	6037	10/11/2013	BUPRENORPHINE 2MG SL TABLETS	120	
PATIENT 3	7808	10/16/2013	HYDROCODONE /ACETAMINOPHEN 10-500 T	100	
PATIENT 3	3227	11/13/2013	HYDROCODONE /ACETAMINOPHEN 10-500 T	100	
PATIENT 3	7808	9/21/2013	HYDROCODONE /ACETAMINOPHEN 10-500 T	100	
PATIENT 4	13965	10/30/2013	MORPHINE SULFATE IMM REL 30MG TAB	100	
PATIENT 5	4312	11/11/2013	METHADONE 10MG TABLETS	270	High Qty

PATIENT 6	9465	11/19/2013	METHADONE 10MG TABLETS	270	Scripts
PATIENT 6	15814	10/19/2013	METHADONE 10MG TABLETS	270	
PATIENT 6	15814	9/20/2013	METHADONE 10MG TABLETS	270	
PATIENT 7	12718	10/14/2013	BUPRENORPHINE 8MG SL TABLETS	240	
PATIENT 7	12718	9/16/2013	BUPRENORPHINE 8MG SL TABLETS	240	
PATIENT 7	12718	11/14/2013	BUPRENORPHINE 8MG SL TABLETS	240	
PATIENT 8	10884	11/20/2013	ALPRAZOLAM 0.25MG TABLETS	60	"Cocktail" Scripts
PATIENT 8	10884	11/20/2013	OXYCODONE 15MG* IMMEDIATE REL TABS	90	
PATIENT 8	10884	11/20/2013	ALPRAZOLAM 0.25MG TABLETS	30	
PATIENT 8	10884	11/20/2013	CARISOPRODOL 350MG TABLETS	60	

420. Dr. Kasser had documented red flags: “high [quantity] cash paid scripts,” “high [quantity] scripts,” and “cocktail scripts.”

421. Despite these concerning red flags, Walgreens continued to fill opioid prescriptions from Dr. Kasser at high volumes for years. For instance, in 2014 Walgreens filled nearly 1,500 opioid prescriptions for Dr. Kasser, comprising more than 120,000 pills.

422. Walgreens’ own dispensing reports revealed that between 2006 and 2018, she prescribed, and Walgreens dispensed, nearly 70,000 doses of cocktail drugs to one of her patients. Among all of the patients to whom Walgreens pharmacies in Tennessee sold cocktail drugs, this particular patient was in the top 25 by volume.

423. In July 2017, the Tennessee Board of Medical Examiners formally reprimanded Dr. Kasser and imposed restrictions on her controlled substance prescribing. The Stipulations of Fact confirmed the red flags that had been reported years earlier to Walgreens:

- [She] provided treatment for chronic pain to numerous patients which included prescribing large doses of narcotics and other controlled substances in amounts and/or for durations without documenting sufficient justification for such prescribing in the patients’ charts.

- [She] failed to document adequate support for diagnoses sufficient to justify the treatment rendered and failed to integrate consultations, previous hospitalizations, and other medical information into the treatment plan.
- [She] prescribed controlled substances and other medication without documenting a written treatment plan with regard to the use of controlled substances and other medications.
- [She] failed to adequately counsel patients regarding anomalous urine drug screens and failed to inform patients of the possible harmful side effects of certain medication combinations.
- [She] prescribed controlled substances for many months without being able to properly monitor the patient for aberrant behavior.
- [She] provided few modalities of treatment other than the prescription of controlled substances and intense psychiatric therapy.
- [She] supervised a registered nurse and permitted her to see [her] pain management patients when [she] was at times not in the office. Additionally, [she] permitted the registered nurse to call in prescriptions for controlled substances for patients, including prescriptions for hydrocodone, benzodiazepines, and suboxone, without [her] having seen the patient.
- [She] voluntarily surrendered her Tennessee Pain Management Clinic Certificate[] ... prior to July 1, 2016, and no longer works in a pain management clinic.

424. Despite the red flags and public disciplinary action, Walgreens nevertheless continued filling prescriptions for controlled substances written by Dr. Kasser.

Dr. Peter Stimpson

425. Another high-volume prescriber was Dr. Peter G. Stimpson, a family doctor located in Loudon (a city of about 6,000 people in East Tennessee) and one of Tennessee's top-50 prescribers of controlled substances in 2014 and 2015.

426. Walgreens stores across Tennessee filled thousands of prescriptions written by Dr. Stimpson for opioids, benzodiazepines, and muscle relaxers. Walgreens even filled these prescriptions for numerous out-of-state patients, including ones from as far as Austin, Texas and Russell, Kansas, as well as Alabama, Arkansas, Illinois, North Carolina, and South Carolina.

427. From 2006 to 2020, Walgreens dispensed more than 8,500 prescriptions, totaling over 670,000 doses of cocktail drugs, written by Dr. Stimpson, accounting for nearly 21 million MMEs—equivalent to 1,400 gallons of liquid morphine 4mg/ml.

428. Walgreens regularly dispensed prescriptions written by Dr. Stimpson for the holy trinity and other cocktail drugs. In fact, Walgreens filled over 2,400 opioid prescriptions for patients who had also filled prescriptions for benzodiazepines at Walgreens within the same three months—all prescribed by Dr. Stimpson.

429. In 2016, the Tennessee Board of Medical Examiners publicly disciplined Dr. Stimpson for a litany of reasons, including that, from at least *March 1999 to 2016*, he:

- [P]rescribed doses of narcotics and other controlled substances without documenting sufficient justification for such prescribing in the patients' charts.
- [F]ailed to make appropriate, individualized diagnoses and/or failed to document adequate support for diagnoses sufficient to justify the treatment rendered.
- [F]ailed to adequately document consultations with patients regarding anomalous urine drug screens and of the harmful effects of medication combinations.
- [F]ailed to document few modalities of treatment other than the prescription of controlled substances provided to his patients.

430. The Order also included a telling example, one which is strikingly similar to the prescriptions Walgreens was filling for his patients during this time:

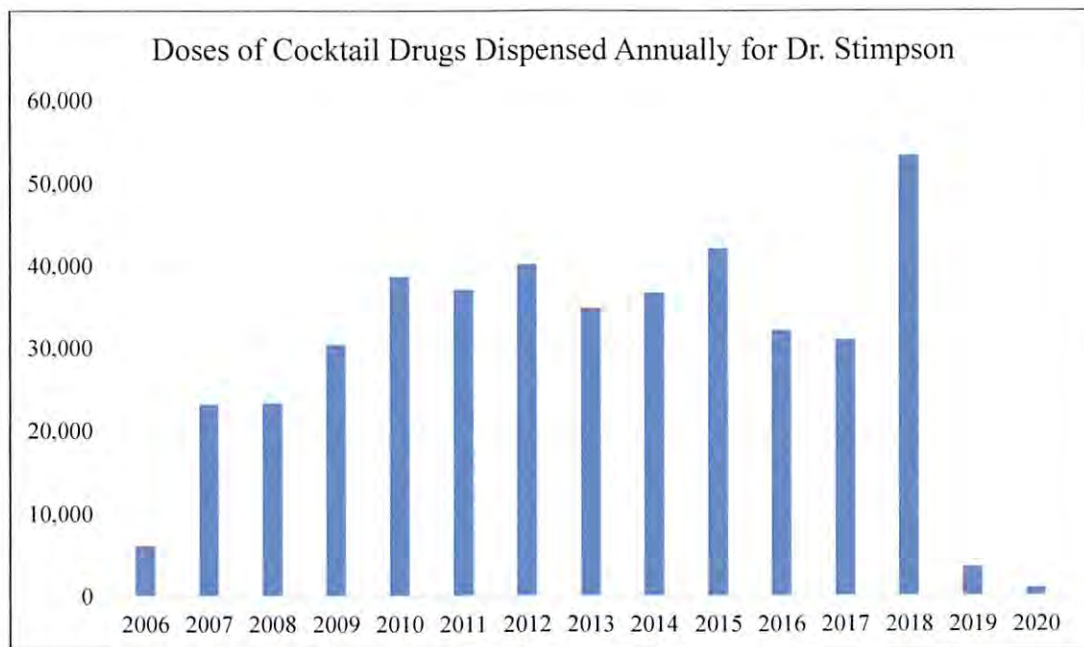
As an example of [his] overprescribing behavior, [he] prescribed patient RH [(name redacted)] dangerously high levels of controlled substances from 2007 through 2014, including prescribing Xanax, Oxycodone Hydrochloride, and Oxycontin [sic], at one point prescribing patient RH a combined total of approximately 900 morphine equivalent daily dosage ("MEDD"). [He] failed to counsel patient RH regarding the dangerous interaction of opiates and benzodiazepines, failed to suggest an alternative treatment, and failed to document in patient RH's chart the variances in dosages, vitals, and plan of care.

431. Despite this public disciplinary action, and despite his appearance on several

internal spreadsheets tracking and analyzing “high prescribers,” Walgreens continued to regularly fill prescriptions issued by Dr. Stimpson.

432. For example, Dr. Stimpson wrote prescriptions for one of his patients to receive a total of over 9,400 tablets of diazepam 5mg (a benzodiazepine, brand name Valium) and over 15,300 tablets of oxycodone, over *half* of which was OxyContin 80mg, and all of which Walgreens filled. This equaled just under 1.1 million MMEs, and the OxyContin 80s alone would have had an estimated street value of about \$633,440.

433. In 2018, while other pharmacies were cracking down on abuse and diversion, Walgreens dispensed almost 1,000 prescriptions written by Dr. Stimpson for cocktail drugs, for a total of 53,362 pills. Cumulatively, this was the equivalent of 2.5 million MMEs.



434. The year 2018 represented the highest number of prescriptions for cocktail drugs dispensed by Walgreens for Dr. Stimpson—even though his license was *still* on probation as a result of the disciplinary action against him only two years prior.

435. A Walgreens pharmacy in Loudon, Tennessee, sold a total of 4,800 ODUs to one

of Dr. Stimpson’s patients—an average of over 13 opioid pills per day. In fact, during every month in 2018, that patient received 120 alprazolam 1mg (Xanax), 150 Oxy 30, and 90 oxymorphone ER 40mg. The vast majority of these co-prescriptions were filled on the same day; the others were filled within one day of each other. All were filled at the same Walgreens store by the same pharmacist.

436. Also in 2018, that same Loudon pharmacy (and, indeed, the same pharmacist) also filled monthly opioid and benzodiazepine prescriptions for another patient of Dr. Stimpson. Each month, Walgreens sold the patient 150 Oxy 30, 120 methadone 10mg, and 60 diazepam 2mg.

437. Walgreens apparently did not see any reason to perform any due diligence on Dr. Stimpson, or investigate whether GFD policies were effective in catching Stimpson’s illicit prescriptions (hint: they were not). This directly led to more and more cocktail drugs being dispensed into the community through June 2020.

The Germantown Gynecologist

438. Like a dentist, an OB-GYN does not typically prescribe many opioids in the course of their practice, so having one write a high volume of opioid prescriptions, especially for oxycodone, is a classic red flag for abuse and diversion.

439. Yet Walgreens pharmacies in Tennessee dispensed over 103,000 ODU’s prescribed by one Germantown OB-GYN during the 10 months from June 2013 to March 2014. Eighty-eight different Walgreens pharmacies in 11 states filled prescriptions from this Tennessee doctor. Almost 20% of the ODU’s prescribed by this OB-GYN and filled by Walgreens during that time were for out-of-state patients, including patients from Alabama, Arkansas, Florida, Illinois, Mississippi, and South Carolina.

440. One out of every five prescriptions during this period were for opioids—a higher

rate than this OB-GYN prescribed hormones or contraceptives.

441. Rx Integrity was aware of the OB-GYN's suspect prescribing practices. When a Germantown Walgreens pharmacy manager asked about simply "putting a CAUTION COMPLY WITH GFD (ALL SCHEDULES)" note on the physician's profile, he was told to "get RXS approval/agreement." He was also told, "it's important our pharmacists know to tread more carefully in some cases . . . we want each pharmacist to review and follow GFD script by script."

442. Even with the "script by script" approach, Walgreens stores still filled prescriptions that should have automatically raised suspicion. For example:

- One patient alone received over 5% of the 103,000+ ODUs filled from June 2013 to March 2014. The patient was a resident of Luray, Tennessee, which is roughly an hour and 45 minutes away from Germantown. Sixty-eight percent of the 5,322 ODUs Walgreens filled for this patient in a ten-month timeframe were for OxyContin 80mg, and the patient always received 360 of these high-dose pills per prescription.
- Another patient drove approximately 4 hours from Gordonsville to see this OB-GYN and fill their prescriptions at a Walgreens store in Cordova. This patient purchased 3,720 ODUs from Walgreens between June 2013 and March 2014, receiving 360 to 420 pills at a time, which were combinations of OxyContin 80mg, oxycodone plus acetaminophen 10/325, alprazolam 2mg, and diazepam 10mg.

443. Walgreens stores also repeatedly filled holy trinity prescriptions written by this OB-GYN, sometimes with the addition of other controlled substances like amphetamines and/or sleeping pills. Between June 2013 and March 2014, Walgreens filled 74 opioid prescriptions for the OB-GYN's patients who also received both a benzodiazepine and a muscle relaxant from Walgreens within three months of the opioid.

444. Walgreens also filled 295 opioid prescriptions for the OB-GYN's patients who received prescriptions for benzodiazepines (also prescribed by the OB-GYN) at Walgreens within three months of each other.

445. Internally, an Rx Integrity Manager discussed highly suspicious red flags about this

OB-GYN's practice and prescribing habits:

From: Daugherty, Patricia
Sent: Wednesday, March 05, 2014 1:55 PM
To: Esposito, Maureen
Subject: RE: GFD

Maureen,

See the data for our stores in the last 90 days. A little under half this prescriber's scripts are for controls. Strange thing too is that our prescriber vendor HMS lists his Specialty as OBGYN. I also pulled data from a vendor IMS that we have access to just script counts controls and more general info they collect from other pharmacy chains and some independents. Looks like for the period Nov2013-Jan2014 Dr. [REDACTED] wrote about 2,729 scripts where 612 or 32% were for controls. He ranks on the high end of the IMS tool in the 97% where for us as you can see below he ranks in the 99% for all controls and we break it down by categories as well. I've seen worse but if stores know not to say anything bad about him to patients and all they are doing is being more careful on his scripts I don't think there's anything wrong with that. I'm just dealing with a totally separate issue in WI regarding a prescriber that a few stores are saying things to patients that are not true like the DEA is investigating the prescriber and she has her family work in her office, etc. etc. where I don't know if she is necessarily a "bad" prescriber. Dr. [REDACTED] in comparison at least ranks fairly high for controlled substances on paper as you can see below-plus he's an OBGYN writing for Oxycodone? Even that many hydrocodone scripts? Seems unusual. Feel free to call me if you want to talk more.

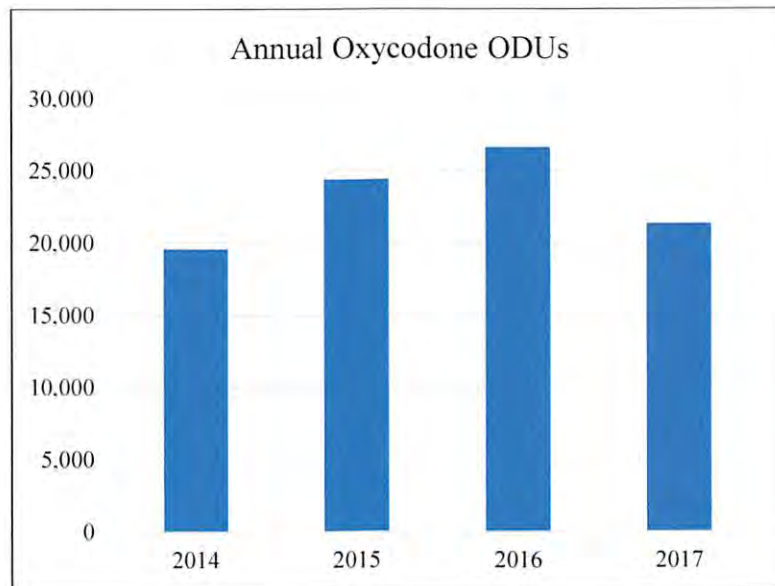
Be Well,
Patty

Patricia Daugherty, PharmD
Walgreen Co
Manager - Pharmaceutical Integrity

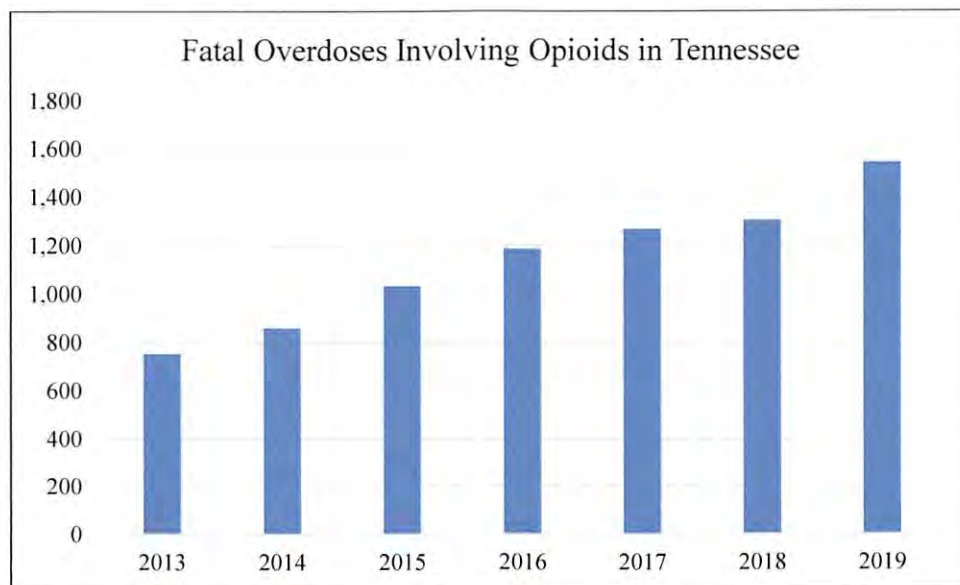
446. In a subsequent email, the same manager noted that it "looks like lots of stores are filling his scripts" and she "noticed some combos of benzo/carisoprodol/hydrocodone or oxy as well." However, the email chain ends there.

447. There is no evidence that Rx Integrity took any steps to further investigate this OB-GYN or limit his ability to fill at Walgreens stores after Patricia Daugherty warned of his penchant for prescribing holy-trinity cocktails.

448. In fact, as shown by the chart below, the quantity of oxycodone prescriptions written by the OB-GYN and filled by Walgreens continued to increase until 2017.



449. While there is a public perception that the opioid epidemic is receding, that hope is fleeting: from 2018 to 2019, total drug overdose deaths in Tennessee involving opioids increased by 18%. In fact, although the CDC reports declining opioid dispensing rates across the country, the opioid-related fatal drug overdoses in Tennessee have only trended in one direction:



450. Without opioids, overdose deaths in the State would look very different. Namely, from 2015 to 2019, opioids were involved in over 70% of all drug overdose deaths in the state. Fatal overdoses involving any opioid continue to increase. The increase in opioid overdose deaths

is primarily being driven by deaths involving heroin and fentanyl, two of the most common opioids that are obtained illicitly.

451. Moreover, due to “[i]ncomplete or inaccurate information reported on death certificates, county budget constraints that limit the number of autopsies, and inconsistencies in how medical examiners, hospitals, and law enforcement officials flag possible overdose deaths,” it is believed that “[t]he actual number of opioid-involved deaths may be as much as 24% higher than official estimates.”

452. Overdose deaths only tell part of the story. Though many people who overdose survive, nonfatal overdoses still have significant repercussions on the State of Tennessee.

453. This is just the tip of the iceberg of the burden and cost of the opioid epidemic on the State and its healthcare systems. Intravenous drug use arising from opioid use has caused a surge in hepatitis C virus (HCV) infections. Areas like Tennessee that have high opioid burdens have seen the highest increases in HCV infections. Between 2006 and 2012, the prevalence of HCV among people under 30 years of age in Central Appalachia jumped by 364%, accompanied by a 21.1% increase in opioid dependency treatment admissions for people aged 12–29. In a 2017 CDC study, the CDC identified the nation’s 220 most vulnerable counties for HIV and HCV infections. Forty-one of Tennessee’s 95 counties were on the list.

454. In addition to its physical toll, the opioid epidemic has devastated the mental health of Tennesseans. By 2012, prescription opioids had become the primary substance of abuse for people in Department of Mental Health and Substance Abuse Services-funded treatment, overtaking alcohol for the first time.

455. According to the Knox County Health Department, the average cost of stabilizing a newborn with NAS is nearly \$63,000—roughly nine times more than the cost of stabilizing a

newborn without NAS.

456. The effects on children born with NAS do not stop after stabilization, however. “Children with NAS [are] 33% more likely to have educational disabilities, requiring classroom therapy, etc.”

457. The opioid epidemic has similarly decimated the economic strength of the State of Tennessee and its workforce.

458. Walgreens is thus responsible for substantially contributing to Tennessee’s ongoing opioid epidemic through its unlawful conduct and should therefore be held accountable.

COUNT I: STATUTORY PUBLIC NUISANCE
Violation of Tennessee’s Public Nuisance Statute
Tenn. Code Ann. § 29-3-103

459. Plaintiff incorporates by reference and re-alleges all other paragraphs of this Complaint as if fully set forth herein, and further alleges as follows:

460. Through their substantial assistance, Walgreens aided and abetted the unlawful sale of narcotics and controlled substances, at Walgreens’ Stores 3535, 3536, 3537, 3798, 5373, 5474, 5828, 6223, 10959, and 13659, among others, and has established or maintained nuisances at those places as provided in Tenn. Code Ann. § 29-3-101(a)(2)(A), (b).

461. Walgreens has established, conducted, and aided or abetted a nuisance by, *inter alia*: ignoring known indicators of diversion and abuse; selling opioids in Tennessee at an alarming rate and volume and in a manner that suggested the drugs were being abused, misused, or diverted; failing to implement or maintain effective controls against abuse and diversion; enacting inadequate policies and/or failing to enforce policies that detect or prevent opioid diversion or abuse; failing to train pharmacy employees about dispensing controlled substances and detecting and preventing abuse and diversion; and hiring, retaining, and encouraging

employees to increase sales of opioids that they knew or should have known were being abused or diverted based on specific information and data available to Walgreens.

462. Walgreens knew that the sale of opioids for illegitimate purposes was unlawful. By failing to maintain effective controls against abuse and diversion and by knowingly selling diverted opioids it knew or should have known were, or were likely to be, diverted, Walgreens aided and abetted a nuisance.

463. Walgreens knew or should have known that substantial diversion was occurring with respect to opioids it sold based on, *inter alia*, its own sales and distribution data, ordering invoices, and other records, reports from auditors and employees, sales of “holy trinity” prescriptions, reports of diversion within its pharmacies, and patient and prescriber data and histories.

464. Furthermore, by owning, leasing, and/or otherwise controlling the pharmacies and nearby premises at Walgreens’ Stores 3535, 3536, 3537, 3798, 5373, 5474, 5828, 6223, 10959, and 13659, among others, Walgreens is liable for maintaining a nuisance consistent with Tenn. Code Ann. § 29-3-101(a)(4), (b).

465. Walgreens constitutes “person[s]” as defined in Tenn. Code Ann. § 29-3-101(a)(3).

466. Walgreens Stores 3535, 3536, 3537, 3798, 5373, 5474, 5828, 6223, 10959, and 13659, among others, are buildings and/or a part or portion thereof of the larger drugstore and constitute “place[s]” as defined in Tenn. Code Ann. § 29-3-101(a)(4).

467. Public services, including costs associated with opioid use disorder prevention, treatment, and recovery as well as law enforcement costs, are required to abate the nuisance Walgreens has established, aided, and abetted.

COUNT II: COMMON LAW NUISANCE

468. Plaintiff incorporates by reference and re-alleges all other paragraphs of this Complaint as if fully set forth herein, and further alleges as follows:

469. Through the actions described above, Walgreens has contributed to and/or assisted in creating and maintaining a condition that has interfered with public health, endangered the lives and health of Tennessee residents, and interfered with the operation of the commercial market.

470. By, *inter alia*: ignoring known indicators of diversion and abuse; dispensing opioids in Tennessee at an alarming rate and volume and in a manner that clearly suggested the drugs were being abused, misused, or diverted; failing to implement or maintain effective controls against abuse and diversion; failing to monitor, detect, investigate, refuse, halt and report suspicious orders of opioids at the time of discovery; enacting inadequate policies and/or failing to enact policies that undermine or prevent opioid diversion or abuse; failing to train pharmacy employees about dispensing controlled substances and preventing diversion; and hiring, retaining, and encouraging employees to increase sales of opioids that they knew or should have known were being abused or diverted based on specific information and data available to Walgreens, the Company has aided, abetted, and established a nuisance through their conduct at their pharmacies.

471. Within the State, Walgreens sold opioids, including through the extensive sale of “holy trinity” prescriptions that lacked any legitimate purpose and despite knowing that the combination drugs were highly sought out by drug seekers and diverters. Walgreens unlawfully sold these prescription opioids that were in Walgreens’ possession and control until the point of sale, when Walgreens knew, or reasonably should have known, these would be diverted and/or used illegally.

472. Through Walgreens’ conduct, Walgreens intentionally and/or unlawfully failed to

maintain effective controls against diversion. Such actions were inherently dangerous to the health and welfare of residents of Tennessee.

473. Both the Tennessee Drug Control Act and the federal Controlled Substances Act create a broad duty on the part of registered pharmacies and distributors to maintain effective controls against diversion. Walgreens violated this duty as set forth above.

474. Walgreens has a duty not to participate in the diversion of opioids and other controlled substances or to otherwise distribute or sell opioids unlawfully. *See* Tenn. Code Ann. §§ 39-17-408; -417; -418, -419; -427; Tenn. Code Ann. §§ 53-11-303, -401; *see also*, 21 U.S.C. § 823(b). Walgreens violated this duty as set forth above.

475. While Walgreens' degree of care is not relevant in a common law nuisance suit brought by the sovereign State, Walgreens behaved knowingly or intentionally as set forth above.

476. Through the actions described above, Walgreens has contributed to and/or assisted in creating and maintaining a condition that endangers the life or health of Tennessee residents and that unreasonably interferes with or obstructs rights common to the public.

477. Walgreens' actions have created an abundance of opioids available for criminal use and fueled a wave of addiction, abuse, injury, and death.

478. Walgreens' actions and failures to act as described above were a substantial factor in numerous unlawful opioid sales.

479. Walgreens' actions have and will continue to injure and harm many residents throughout Tennessee for many years to come.

480. While tort-based standards are not applicable to a public nuisance suit brought by the sovereign State, the public nuisance was foreseeable to Walgreens, which knew or should have known that Walgreens' conduct was creating a public nuisance.

481. A reasonable person in Walgreens' position would foresee diversion and abuse from the opioids Walgreens sold based on their knowledge of red flags for abuse and diversion.

482. But for Walgreens' conduct, an abundance of opioids would not have been accessible for diversion to the black market or for abuse.

483. Walgreens acted without the express authority of a statute in its conduct referenced above.

484. The health and safety of Tennessee residents, including those who use, have used, or will use opioids, as well as those affected by abusers or diverters of opioids, is a matter of great public interest and of legitimate concern to the State. Tennesseans have a right to be free from conduct that endangers their health and safety and that interferes with the commercial marketplace. Walgreens' conduct interfered in the enjoyment of these public rights.

485. Public services, including costs associated with opioid use disorder prevention, treatment, and recovery as well as law enforcement costs, have been incurred and are required to abate or manage the nuisance Walgreens has aided and abetted.

486. As part of its nuisance action, the State does not seek monetary relief attributable to TennCare, Medicaid, or Medicare.

COUNT III: TENNESSEE CONSUMER PROTECTION ACT
Violations of Tenn. Code Ann. § 47-18-104(a) and (b)(43)(C)

487. Plaintiff incorporates by reference and re-alleges all other paragraphs of this Complaint as if fully set forth herein, and further alleges as follows:

488. Walgreens' selling, distributing, and offering of opioid products, as alleged herein, constitute and affect "trade," "commerce," and/or a "consumer transaction" as defined in Tenn. Code Ann. § 47-18-103(19) and as those terms have been interpreted by the Tennessee Supreme Court in *Fayne v. Vincent*, 301 S.W.3d 162, 175 (Tenn. 2009), and elsewhere.

489. The opioids Walgreens sold as alleged herein constitute “goods” as defined in Tenn. Code Ann. § 47-18-103(7) and were obtained for use by individuals primarily for personal purposes.

490. Opioids are Schedule II controlled substances that are unlawful to sell or possess in Tennessee absent limited exceptions. *See* Tenn. Code Ann. §§ 39-17-417(a)(3) and (4).

491. Controlled substances that are diverted or that are not procured through a valid prescription are unlawful. Prescriptions that are not in the usual course of professional treatment or in legitimate and authorized research are invalid. *See* Tenn. Code Ann. §§ 39-17-417(a), -418(a), -419; *see also* 21 C.F.R. § 1306.04(a). Many of the opioid prescriptions referenced herein that were distributed by Walgreens to its retail pharmacies were not issued for a legitimate medical purpose and were not in the usual course of professional treatment or for legitimate and authorized research.

492. Selling or offering to sell opioids to pharmacies from which diversion is known to be occurring or invalid prescriptions are known to be dispensed, as alleged herein, constitutes the act or practice of directly or indirectly selling or offering for sale any good that is illegal or unlawful to sell in the state in violation of Tenn. Code Ann. § 47-18-104(b)(43)(C) in each instance.

493. Additionally, licensed pharmacies must “lawfully possess” a controlled substance as authorized under Tenn. Code Ann. §§ 39-17-401 to -455, Tenn. Code Ann. §§ 53-11-301 to -311, or Tenn. Code Ann. §§ 53-11-401 to -413. No provision in the Tennessee Code Annotated allows a licensed pharmacy to sell or possess a narcotic, including a Schedule II such as oxycodone, that it knows or should reasonably know will be diverted.

494. In fact, it is unlawful for licensed pharmacies, such as those operated by Walgreens,

to distribute or dispense a controlled substance that is not authorized by the registrant's registration to an authorized person such as a pharmacist. *See* Tenn. Code Ann. § 53-11-401(a)(1). The license is based, among other things, on "[m]aintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels[.]" *see* Tenn. Code Ann. § 53-11-303(a)(1), and "[t]he existence in the applicant's establishment of effective controls against diversion." *See* Tenn. Code Ann. § 53-11-303(a)(4).

495. Dispensing a controlled substance in a manner inconsistent with the pharmacy's or pharmacist's licensure law precludes a party from relying on the exception in Tenn. Code Ann. § 39-17-427 and renders the underlying controlled substances unlawful or illegal.

496. Among other things, Walgreens' failure to maintain effective controls against opioid diversion, predominantly through its corporate policies, practices, and directives, coupled with the continued sale of opioids despite specific knowledge that diversion of these opioids would occur or was highly likely to occur or that the underlying prescriptions, including "holy trinity" combination prescriptions consisting of an opioid, a benzodiazepine, and muscle relaxer, were illegitimate, renders the opioids (and benzodiazepines and muscle relaxers) unlawful for purposes of the TCPA.

497. Knowingly selling or offering to sell opioids that will be diverted or abused, as alleged herein, constitutes the act or practice of directly or indirectly selling or offering for sale any good that is illegal or unlawful to sell in the state in violation of Tenn. Code Ann. § 47-18-104(b)(43)(C) in each instance.

498. By engaging in the above conduct concerning highly addictive and potentially deadly pharmaceutical drugs that affect consumer health and safety, Walgreens has also caused or is likely to cause substantial injury to consumers or other persons which, due to the addictive

potential of the underlying products and known downstream consequences, is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or competition. Thus, Walgreens has violated Tenn. Code Ann. § 47-18-104(a) in each instance.

499. As alleged herein, Walgreens knew specific information and had actionable intelligence about diversion and abuse of the opioids from its pharmacies and actively enabled it and participated in it for the sake of profit. Walgreens also possessed such information and intelligence while it operated as a distributor of opioids to these pharmacies.

500. Through this action, the State does not seek removal of any opioid or other product from the market, does not seek recovery for personal injury, death, or property damage, or injury to a specific person.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, the State of Tennessee, *ex rel.* Herbert H. Slatery III, Attorney General and Reporter, pursuant to Tennessee's public nuisance statute, the TCPA, the Attorney General's general statutory authority, the Attorney General's authority at common law, and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 29-3-104, and 47-18-116;
2. That process issue and be served upon Walgreens requiring it to appear and answer;
3. That an order be entered that provides for abatement of the public nuisance Walgreens aided and abetted, the costs of abating or managing this nuisance, as provided in Tenn. Code Ann. §§ 29-3-101(b), (d), 29-3-110, 29-3-114, and any other relief or remedy allowable under state law;
4. That, in addition to the above, an order be entered that directs the seizure and

forfeiture of “moneys and stock used in or in connection with the maintaining or conducting of a nuisance” for any place found to constitute a statutory nuisance that is under the ownership, management, or control of Walgreens, including at Stores 3535, 3536, 3537, 3798, 5373, 5474, 5828, 6223, 10959, and 13659, among others, consistent with Tenn. Code Ann. § 29-3-101(d);

5. That an order be entered that provides for abatement of the public nuisance Walgreens has created, the equitable costs of abating this common law nuisance, and any other relief or remedy allowable under state law;

6. That this Court adjudge and decree that Walgreens has engaged in the aforementioned acts or practices that violate the TCPA;

7. That pursuant to Tenn. Code Ann. § 47-18-108(a)(1), (a)(4), and (a)(5), this Court permanently enjoin and restrain Walgreens from engaging in the aforementioned acts or practices which violate the TCPA;

8. That this Court make such orders or render such judgments as may be necessary to disgorge the net-profits and ill-gotten gains Walgreens realized by reason of the alleged violations of law;

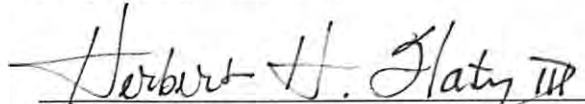
9. That this Court adjudge and decree that Walgreens pay a civil penalty of \$1,000 to the State for each violation of the TCPA, as provided by Tenn. Code Ann. § 47-18-108(b)(3);

10. That this Court enter judgment against Walgreens and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of this action, including attorneys’ fees, costs, and expert and other witness fees, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4), and other state law;

11. That all costs, including discretionary costs, in this case be taxed against Walgreens;

12. That a jury be empaneled to hear and decide all appropriate matters; and
13. That this Court grant the State such other and further relief as this Court deems just and proper.

Respectfully submitted,


HERBERT H. SLATTERY III, B.P.R. No. 9077
Attorney General and Reporter


MARGARET ROWLAND, B.P.R. No. 033513
Assistant Attorney General
OLHA RYBAKOFF, B.P.R. No. 024254
Senior Assistant Attorney General
HAMILTON MILLWEE, B.P.R. No. 038795
Assistant Attorney General
KRISTINE KNOWLES, B.P.R. No. 040010
Assistant Attorney General
Office of the Attorney General of Tennessee
Consumer Protection Division
P.O. Box 20207
Nashville, TN 37202
(615)741-3549
margaret.rowland@ag.tn.gov
olha.rybakoff@ag.tn.gov
hamilton.millwee@ag.tn.gov
kristine.knowles@ag.tn.gov

Paine, Tarwater & Bickers, LLP

Dwight E. Tarwater, B.P.R. No. 007244
Taylor A. Williams, B.P.R. No. 028172
Lindsey M. Collins, B.P.R. No. 033426
Michael S. Deel, B.P.R. No. 036784
900 S. Gay Street, Suite 2200
Knoxville, TN 37902
(865) 525-0880 (phone)

Outside Counsel for State