

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

Case No. 17-MD-2804

This document relates to:

Judge Dan Aaron Polster

Track 3 Cases.

**DEFENDANTS WALGREEN CO., WALGREEN EASTERN CO.,
AND WALGREENS BOOTS ALLIANCE’S WRITTEN RESPONSES TO
CERTAIN OF PLAINTIFFS’ RULE 30(b)(6) TOPICS**

Defendants Walgreen Co., Walgreen Eastern Co., and Walgreens Boots Alliance, Inc. (“Walgreens”) hereby respond to certain of Plaintiffs’ Rule 30(b)(6) Topics (“Topics”) in accordance with the Federal Rules of Civil Procedure, the Local Rules of the Northern District of Ohio, the Case Management Orders in these cases, and the agreement of the parties.

GENERAL OBJECTIONS

1. These responses are made solely for the purpose of this multidistrict litigation. By responding to these Topics, Walgreens does not waive any objections that it may have to the admission into evidence of these responses, or any documents and things produced in response to these Topics, on any applicable grounds. Walgreens reserves the right to object on any ground at any time to a request for further responses to these Topics, as well as the right to revise, correct, add to, supplement, or clarify any of the objections contained herein at any time.

2. Walgreens objects to the Definitions and Instructions used in these Topics to the extent that they purport to impose obligations or burdens on Walgreens that go beyond those imposed by the Federal Rules of Civil Procedure, the Local Rules of the Northern District of

PLAINTIFF TRIAL
EXHIBIT
P-28446_00001

P-28446 _ 00001

Ohio, the Case Management Orders, and the Discovery Rulings entered in this action (referred to collectively as “Discovery Rules”). Walgreens will comply with the Discovery Rules, but assumes no further obligation in responding to these Topics.

3. Walgreens objects to these Topics to the extent that they seek discovery that is not relevant to any party’s claims or defenses.

4. Walgreens objects to these Topics to the extent they are not proportional to the needs of these cases, considering the importance of the issues at stake, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit, and that otherwise goes beyond the scope of permissible discovery at this stage of these proceedings.

5. Walgreens objects to these Topics to the extent they seek discovery that is not relevant to the Track 3 cases.

6. Walgreens objects to these Topics to the extent that they seek information or documents that are protected from disclosure by the attorney-client privilege, work product doctrine, joint defense privilege, common interest privilege, or any other applicable privilege or protection (“privileged information”).

7. Walgreens objects to these Topics, and to the Definitions and Instructions included with them, to the extent that any Topic, Definition, or Instruction seeks disclosure of information protected by any confidentiality obligation owed to a third party. Walgreens will not disclose or produce such information or documents absent notice to and, if required, consent of the third party or entry of a court order compelling production.

8. Walgreens objects to these Topics to the extent that they seek information that (a) is in Plaintiffs' possession, custody, or control; (b) is not in Walgreens' possession, custody, or control; (c) is equally or more readily available from sources other than Walgreens; (d) Plaintiffs can obtain from other sources that are more convenient, less burdensome, and/or less expensive than requiring Walgreens to provide the information; (e) is not reasonably accessible to Walgreens; and/or (f) is publicly available to Plaintiffs. With regard to any response that Walgreens provides, Walgreens' response will be limited to relevant, responsive, and non-privileged information or documents in its possession, custody, or control located after a reasonable search that is proportional to the needs of these cases.

9. Walgreens objects to these Topics to the extent that they contain terms that are not defined or terms that are defined in a vague, ambiguous, or unintelligible manner.

10. Walgreens objects to these Topics, and to the Definitions and Instructions, to the extent that any Topic, Definition, or Instruction: (a) is unduly burdensome, oppressive, overly broad, ambiguous, confusing, or vague; (b) is duplicative or unreasonably cumulative of other discovery in this investigation; or (c) calls for Walgreens to draw a legal conclusion in order to respond.

11. Walgreens objects to each Topic to the extent that it seeks premature expert discovery or disclosure of expert opinions. Walgreens will provide expert discovery and disclosures on the dates set by the Court in compliance with the Discovery Rules.

12. Walgreens objects to the extent the Topics seek improper lay opinion or make erroneous statements of law. Any response to the Topics shall be as to matters of fact only and shall not be construed as stating or implying any conclusion of law concerning any of the Topics.

13. Walgreens' investigation and discovery are ongoing as to all matters referred to in these objections and responses to the Topics. Walgreens' responses are based upon information that has been collected and reviewed to date for the purpose of responding to these Topics, and they are not prepared from the personal knowledge of any single individual. Walgreens reserves the right to amend and supplement these responses as discovery and this litigation proceed.

14. Walgreens objects to topics that are not described with reasonable particularity, as required by Federal Rule of Civil Procedure 30(b)(6).

15. Walgreens objects to the Topics to the extent they seek information regarding distribution-related topics, suspicious order monitoring and reporting, or any other topic covered during plaintiffs' Rule 30(b)(6) questioning of Walgreens in Track 1. Walgreens prepared its Rule 30(b)(6) witnesses for multiple days of testimony in Track 1, and plaintiffs covered distribution-related topics in Rule 30(b)(6) questioning at length. Walgreens will not offer responses on those same topics again.

16. Walgreens objects to the Topics to the extent they mischaracterize the obligations imposed on pharmacists, pharmacies, or companies that own pharmacies, particularly with respect to the dispensing of controlled substances under federal law, and to the extent they seek to impose additional obligations other than those required by federal law.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Walgreens objects to the Definitions of "You" and "Your" on the grounds that they are overly broad, vague, ambiguous, and purport to extend the Topics beyond the Walgreens entities that are named as Defendants in this litigation and seek information and documents that are not in Walgreens' possession, custody, or control. For purposes of its responses, Walgreens will define "You" and "Your" to mean Walgreen Co., Walgreen Eastern

Co., and Walgreens Boots Alliance, Inc. and will respond with regard to information and documents in those entities' possession, custody, or control.

2. Walgreens objects to the Definitions of "Document" and "Communication" to the extent that they seek to impose obligations on Walgreens beyond those imposed by the Discovery Rules. Walgreens will respond in accordance with the applicable Discovery Rules and assumes no further obligation.

3. Walgreens objects to the Definitions of "Opioid," "Opioids," "Opioid Product," and "Opioid Products" on the grounds that they are overly broad, vague, ambiguous, and unduly burdensome and, as defined by Plaintiffs, seek discovery that is not relevant to any party's claims or defenses, nor proportional to the needs of these cases. For purposes of responding to these Topics, Walgreens will interpret "Opioid," "Opioids," "Opioid Product," and "Opioid Products" to mean oxycodone, hydrocodone, hydromorphone, fentanyl, oxymorphone, morphine, methadone, and tapentadol, including the brand names for those Opioids – Oxycontin, Dilaudid, Hysingla, Targin, Kadian, Norco, Actiq, Duragesic, Nucynta, Opana, Percocet, Subsys, Exalgo, Roxicodone, Xartemis, and Methadose.

4. Walgreens objects to the Definition of "Suspicious Order" to the extent that it differs from or extends beyond the Definition of "Suspicious Order" that appears in 21 C.F.R. § 1301.74, which includes orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency. Walgreens further objects to the extent that Plaintiffs' Definition of "Suspicious Order" incorporates Plaintiffs' Definitions of "Opioids" and "Opioid Products" on the grounds that it is overly broad, vague, ambiguous, and unduly burdensome and, as defined by Plaintiffs, seeks discovery that is not relevant to any party's claims or defenses, nor proportional to the needs of these cases. For purposes of its responses, Walgreens

will interpret “Suspicious Order” using the DEA’s definition for this term as it relates to “Opioids” and “Opioid Products” as defined by Walgreens above.

5. Walgreens objects to the Definition of “Reasonably available” as overbroad, ambiguous, and unduly burdensome. Walgreens objects to the Topics to the extent they seek information that is not within Walgreens’ possession, custody, or control, or information that is not maintained in the ordinary course of business.

6. Walgreens objects to the Definition of “Red Flag” because it is vague and ambiguous.

7. Walgreens objects to the Definition of the terms “You and “Your” in the Topics because it is overly broad, vague, and ambiguous, encompassing business units and “affiliated” entities. Walgreens objects to the Topics to the extent they seek the knowledge of any person or entity other than the Walgreens entities that are named Defendants in the Track 3 cases.

8. Walgreens objects to Plaintiffs’ Instructions regarding the “Duty to Designate,” “Duty to Substitute,” and “Duty to Prepare” to the extent those Instructions impose obligations on Walgreens that are inconsistent with the Federal Rules of Civil Procedure, including Rule 30, the MDL Case Management Orders, and the Deposition Protocol Order.

9. Walgreens reserves the right to supplement and amend any of its general objections, specific objections, or responses based upon, among other things, discovery of additional facts and materials and other developments in this action. Walgreens reserves all objections as to the admissibility of any information provided in response to the Topics at trial in this or any other proceeding or action for any purpose whatsoever.

**OBJECTIONS AND RESPONSES TO CERTAIN OF
PLAINTIFFS’ “GENERAL” RULE 30(b)(6) TOPICS**

TOPIC NO. 8. The policies, procedures and training materials for Walgreens’ pharmacies and pharmacists related to the dispensing of opioids and cocktail drugs including, but not limited to, the identification and resolution of “Red Flags,” the use or non-use of prescription drug monitoring programs including the Ohio Automated RX Reporting Systems (“OARRS”), and the procedures for handling prescriptions that are doubtful, questionable or are otherwise suspicious as well as the individuals, departments and corporate personnel who had access to said policies, procedures and training materials.

In addition to the objections above, Walgreens objects that this topic is overly broad and unduly burdensome in that it includes *all* policies, procedures and training materials related to the dispensing of opioids and cocktail drugs, for an unlimited time period. Walgreens objects that this topic is vague and ambiguous as to “cocktail drugs,” “Red Flags,” and “prescription drug monitoring programs” other than OARRS. Walgreens has produced fourteen years of dispensing data for the entire state of Ohio. Walgreens objects to this topic to the extent it seeks testimony on individual prescriptions within Walgreens’ dispensing data. Plaintiffs have not identified any individual prescriptions on which they seek testimony, or even any categories of prescriptions. Walgreens objects that it is unclear how or whether plaintiffs intend to distinguish this topic from Topic No. 1.

Subject to and without waiving these objections, Walgreens incorporates by reference its responses to Track 3 Plaintiffs’ First Set of Interrogatories No. 5 and No. 9, which identify dispensing-related policies, procedures, and training materials located following a reasonable search. Walgreens trains its pharmacy personnel on Good Faith Dispensing. Walgreens also reviews, and where reasonable and appropriate, revises its policies, training materials, processes, and practices. For example, Walgreens reviews and enhances its Good Faith Dispensing Policy and training materials, as necessary, to identify signs of potential diversion for pharmacists to consider in making professional judgments regarding dispensing of controlled substances.

Walgreens' dispensing policies and pharmacist training reflects the pharmacist's corresponding responsibility not to fill a prescription that the pharmacist knows or has reason to know was issued for other than a legitimate medical purpose or by a practitioner acting outside the usual course of professional practice. Walgreens also instructs pharmacists and supervisory personnel to contact the Pharmaceutical Integrity department, as appropriate, to address specific issues arising with particular patients or physicians, so that Pharmaceutical Integrity can assess and respond to such issues. Walgreens' Pharmaceutical Integrity department is composed of personnel with pharmacy-related training and managerial personnel, who are trained in relevant diversion-related issues, and coordinate compliance efforts related to controlled substances. Walgreens also maintains procedures to verify that the DEA registration number for the issuing prescriber of a controlled substance is a current, valid registration number. Pharmacist training also covers instruction on how to assist DEA in obtaining records.

Walgreens' dispensing policies, practices, and training materials are widely available to employees at Walgreens, including but not limited to employees who work as staff pharmacists, pharmacy technicians, and other pharmacy staff; pharmacy management and other field leadership; employees in pharmacy operations, pharmaceutical integrity, asset protection, inventory, government affairs, and pharmacy law. Walgreens further incorporates by reference its response to Interrogatory No. 10, its Second Amended Responses to Track One Plaintiffs' First Set of Interrogatories Nos. 5 and 17, its correspondence of June 26, 2020 identifying pharmacists, pharmacy managers, and District Managers covering Lake and Trumbull Counties, and its correspondence of September 7, 2018 identifying Ohio field leadership.

TOPIC NO. 9. Performance metrics in place at Walgreens to measure pharmacist and pharmacy performance, pay, and pharmacy staff bonuses and discipline, as well as the individuals, departments and corporate personnel who had oversight of these programs and metrics.

In addition to the objections above, Walgreens objects that this Topic is vague and ambiguous as to “performance metrics.” Walgreens objects that this Topic is overly broad and unduly burdensome, and not proportional to the needs of these cases, in that it seeks *all* pharmacist performance metrics for an unlimited time period. Walgreens objects that this Topic is not relevant to any claim or defense in these cases. Walgreens objects that this Topic duplicates discovery taken in Track 1.

Subject to and without waiving these objections, Walgreens incorporates by reference its response to Track 1 Plaintiffs’ Interrogatory No. 29 and the compensation policies and related documents cited there. Walgreens further states that during the relevant timeframe, Walgreens has evaluated its pharmacists’ performance and compensation with respect to dispensing in a variety of ways. Since approximately the 2013-2014 timeframe, Walgreens’ Pharmaceutical Integrity department has run regular reports, known as GFD Opportunities reports, generated from Walgreens’ dispensing data, on its pharmacies’ and pharmacists’ dispensing of controlled substances, for field leadership (district managers, healthcare supervisors and others in the field) to compare those pharmacies and pharmacists to their peers at Walgreens to determine whether coaching on filling prescriptions or other discipline is appropriate. With respect to the methods Walgreens uses to collect, record, and maintain the data used in these reports, Walgreens incorporates by reference its responses to Document Topics No. 1 and No. 2. Walgreens further states that Walgreens’ reporting server pulls the dispensing data used to generate these reports from Walgreens’ enterprise data warehouse. The reports are maintained on Pharmaceutical Integrity’s web portal and updated quarterly. Walgreens also evaluates pharmacists based on

patient complaints regarding alleged errors in filling prescriptions to determine whether coaching or other discipline is appropriate.

Walgreens further states that it uses other metrics to evaluate and compensate pharmacists that are unrelated to the dispensing of prescription opioids. For example, Walgreens uses a proportion of days covered (PDC) metric to evaluate pharmacies based on their patients' adherence to medications for three disease states: diabetes, hypertension, and high cholesterol. The PDC metric evaluates pharmacies based on how many patients are adherent to their medications, which, in turn, is based on the number of days' supply a patient has on hand of the medication in a calendar year. In addition, pharmacists are evaluated based on how often they meet the time promised to a patient for the filling of a prescription; prescriptions for controlled substances are not evaluated based on the promised time. Walgreens also evaluates its pharmacists based on a store's total prescription count, adjusted to remove prescriptions for controlled substances, and to account for 90-day prescriptions (i.e., controlled substance prescriptions are not included in the total count, and 90-day prescriptions are multiplied by three before being included in the count). Walgreens also evaluates pharmacists based on patient complaints regarding alleged errors in filling prescriptions to determine whether coaching or other discipline is appropriate.

Topic No. 11 [WAG TOPIC 13]. Internal and external investigations and audits performed, if any, on Walgreens' pharmacies and/or pharmacists in Track 3.

In addition to the objections above, Walgreens objects that this topic is overbroad, unduly burdensome, vague, and ambiguous in that it seeks testimony on unspecified internal and external investigations and audits for an unlimited timeframe. Subject to and without waiving those objections, Walgreens incorporates by reference its responses to Interrogatories No. 4 and No. 13.

Topic No. 12 [WAG TOPIC 14]. Any reports to, and communications with, the DEA, law enforcement and/or the any other administrative or governmental body concerning the distribution or dispensing of opioids in Walgreens Track 3 stores.

In addition to the objections above, Walgreens objects that this topic is overbroad and unduly burdensome in that it seeks testimony on all communications with an unspecified list of government agencies, for an unlimited time period. Walgreens objects that this topic is overbroad and unduly burdensome in that it seeks testimony relating to distribution. Walgreens objects that this topic seeks testimony that is duplicative of testimony plaintiffs sought in Track 1 regarding distribution. Walgreens has already offered a full-day of 30(b)(6) testimony on distribution-related topics and will not duplicate the information provided in that testimony here. Walgreens objects that this topic is vague and ambiguous as to which communications—or even which types of communications—plaintiffs intend to include in this topic.

Subject to and without waiving those objections, Walgreens incorporates by reference its responses to Track 3 Plaintiffs' Second Set of Combined Interrogatories No. 1 and No. 2.

Dated: February 26, 2021

Respectfully submitted,

WALGREEN CO.,
WALGREEN EASTERN CO., and WALGREENS
BOOTS ALLIANCE, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2021, the foregoing has been served on plaintiffs' and defense counsel via the following email lists:

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/s/ Katherine M. Swift

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