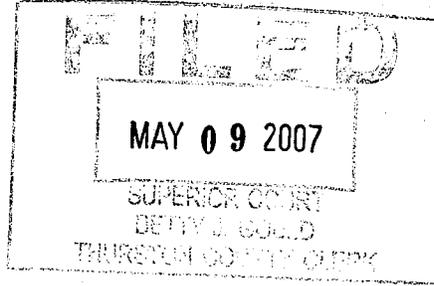


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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF THURSTON

10 STATE OF WASHINGTON,
11 Plaintiff,

NO. 07-2-00917-2

COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT

12 v.

13 PURDUE PHARMA L.P., a Delaware
14 limited partnership; THE PURDUE
15 FREDERICK COMPANY INC., a New
16 York corporation; and PURDUE PHARMA
INC., a New York corporation and the
general partner of Purdue Pharma L.P.,

Defendants.

17
18 COMPLAINT

19 1. This civil action is brought by the Washington Attorney General pursuant to the
20 Washington Consumer Protection Act – RCW 19.86 *et seq*; arising out of Purdue Pharma’s
21 unfair and deceptive marketing of the opioid painkiller OxyContin. Although OxyContin is a
22 Schedule II narcotic with an abuse profile and addictive qualities similar to morphine, Purdue
23 aggressively promoted OxyContin to doctors, nurses and consumers as a first-choice analgesic
24 for treatment of a wide variety of pain symptoms. While it expanded the market for
25 OxyContin, Purdue avoided and minimized the known risks of OxyContin abuse, addiction and
26

1 diversion. Purdue failed to adequately warn doctors or consumers of OxyContin's significant
2 risks and failed to take reasonable steps to guard against OxyContin abuse and diversion,
3 instead striving to "educate" doctors and consumers that concerns over abuse, addiction and
4 diversion of OxyContin were misplaced. Purdue's aggressive promotion of OxyContin led to a
5 dramatic increase in OxyContin prescriptions, which in turn, furthered an increase in
6 OxyContin abuse and diversion from legitimate users to illicit use of OxyContin.
7

8 THE PARTIES

9 2. The Plaintiff, State of Washington, is represented by the Attorney General who
10 brings this action in the public interest pursuant to authority granted in RCW 19.86.080.

11 3. Defendant Purdue Pharma L.P. is a Delaware limited partnership with its
12 principal place of business at One Stamford Forum, Stamford, Connecticut. At all times
13 relevant to this Complaint, Purdue Pharma L.P. has been in the business of designing, testing,
14 manufacturing, labeling, advertising, promoting, marketing, selling, and/or distributing
15 OxyContin throughout the United States, including the State of Washington.
16

17 4. Defendant Purdue Pharma Inc. is a New York corporation with its principal
18 place of business at One Stamford Forum, Stamford, Connecticut. At all times relevant to this
19 Complaint, Purdue Pharma Inc. has been in the business of designing, testing, manufacturing,
20 labeling, advertising, promoting, marketing, selling, and/or distributing OxyContin throughout
21 United States, including the State of Washington. Purdue Pharma Inc. is the general partner of
22 Purdue Pharma, L.P., and at all relevant times has supervised and managed the operations and
23 affairs of its subsidiary and affiliate, Purdue Pharma, L.P.
24
25
26

1 11. Purdue developed and manufactures OxyContin. OxyContin's controlled
2 release of oxycodone purports to facilitate 12-hour dosing for OxyContin, which distinguished
3 it from other oxycodone tablets typically administered in 4 to 6 hour doses. Due in part to its
4 controlled-release feature, OxyContin contains more oxycodone than other oxycodone drugs.
5

6 12. OxyContin is a Schedule II narcotic, which means its manufacture and
7 distribution is subject to the Drug Enforcement Agency's ("DEA") regulation and control.
8 Classification of OxyContin as a Schedule II controlled substance means that the DEA has
9 determined that OxyContin: i) has a high potential for abuse, ii) has been accepted for medical
10 use in the United States subject to severe restrictions, and iii) abuse may lead to severe
11 psychological or physical dependence.
12

13 13. As reflected by the DEA's oversight, OxyContin has an abuse profile, and
14 addictive qualities, similar to morphine. Among other things, this means that: first, OxyContin
15 users experience euphoria, making the drug prone to abuse (*i.e.*, non-medical use); second,
16 OxyContin causes physical dependence in a short time, meaning that a user will experience
17 withdrawal symptoms upon terminating use; and third, tolerance is common, meaning that,
18 over time, dosage often must increase in order to provide the same level of pain relief.
19

20 14. In sum, opioids like OxyContin cause physical dependence and are prone to
21 abuse and addiction. As a result, doctors have traditionally, and correctly, exercised caution in
22 prescribing opioids, weighing their analgesic effect against the risks of dependence, addiction,
23 abuse, and diversion from legitimate patients to illicit, non-medical use.
24

25 15. Although OxyContin posed the same risks as MS Contin and other opioids,
26 Purdue, as part of its marketing strategy, sought to position OxyContin differently from other

1 | opioids by avoiding or minimizing the drug's known risks.

2 | 16. In December 1995, the FDA approved the use of OxyContin for the following
3 | "indications," that is, the circumstances for which the FDA has determined that a drug is safe
4 | and effective:

5 | Indications: "OxyContin Tablets are a controlled-release oral formulation of
6 | oxycodone hydrochloride indicated for the management of moderate-to-severe
7 | pain where use of an opioid analgesic is appropriate for more than a few days."

8 | 17. In 2001, the FDA changed the OxyContin indications. OxyContin is now
9 | indicated for the "management of moderate-to-severe pain *when a continuous around-the-*
10 | *clock analgesic is needed for an extended period of time.*"

11 | 18. Since 1995, the FDA also has restricted the appropriate marketing and use of
12 | OxyContin as reflected in the OxyContin label. Among other things, the FDA has determined
13 | that OxyContin, because it has not been shown to be safe and effective for these uses, should
14 | not be promoted:

- 15 | • for use as a prn analgesic. "Prn" means as needed, or as required.
- 16 | • for use as a preemptive analgesia (pre-operative), that is, not to be administered
- 17 | in advance of an operation for expected pain.
- 18 | • for post-operative pain in patients not already on OxyContin.
- 19 | • for post-operative pain unless the pain is moderate-to-severe and expected to
- 20 | persist for an extended period.
- 21 | • where contraindicated for patients with significant respiratory depression, acute
- 22 | or severe bronchial asthma or hypercarbia, or with paralytic ileus.

23 | **Purdue Promoted OxyContin through a**
24 | **Multifaceted Marketing Campaign**

25 | 19. Purdue has marketed OxyContin to doctors, dentists, nurses, other healthcare
26 | professionals, and patients. Purdue's goals have been to increase the number of doctors
prescribing OxyContin, increase the number of patients taking OxyContin, and increase the

1 OxyContin dosages prescribed by doctors, all in order to increase OxyContin sales and
2 generate profits for Purdue.

3 20. Purdue has, at various times:

- 4 a) employed hundreds of sales representatives paid to visit with doctors, nurses,
5 pharmacists and other health care professionals to expand the prescription
6 writing base and increase prescription writing for OxyContin;
- 7 b) prepared and distributed sales aids, visuals, hand outs, and "leave behind"
8 promotional items to be used by sales representatives and distributed to
9 healthcare professionals;
- 10 c) conducted seminars, trainings and purported educational programs for health
11 care professionals to promote treatment of pain via increased opioid usage,
12 specifically OxyContin;
- 13 d) placed OxyContin advertisements in medical journals and other publications
14 directed at healthcare professionals;
- 15 e) maintained websites directed at patients, patient families, and healthcare
16 professionals promoting pain treatment, specifically via prescribing OxyContin
17 or other opioids;

18 21. Purdue's sales efforts are directed to: i) get doctors to prescribe and nurses to
19 recommend OxyContin, ii) ensure that hospitals and managed care organizations place
20 OxyContin on their drug formularies and treat it favorably vis-a-vis other painkillers, iii)
21 encourage pharmacies to stock OxyContin, in all prescription strengths, and iv) encourage
22 hospitals and long term care facilities to purchase and use OxyContin for their patients.

23 22. The bulk of sales representatives' efforts focus on visiting doctors, nurses and
24 other medical staff. Purdue provides its sales representatives with precise information on
25 doctors' prescribing histories for OxyContin and other opioid painkillers. Armed with this
26 information, Purdue and its sales representatives identify "core" physicians and "A-1" sales
targets, who are deemed to be actual or potential high-volume prescribers of OxyContin.

1 23. Purdue sales representatives visited these doctors and their staffs to encourage
2 use of OxyContin. If a doctor prescribed opioids other than OxyContin, Purdue sales reps
3 encouraged them to switch to OxyContin. If a doctor already prescribed OxyContin, Purdue
4 sales representatives encouraged OxyContin for more patients, for broader uses, and in
5 increased dosages or strengths.
6

7 24. Purdue linked sales representatives' compensation directly to increased
8 OxyContin prescribing by those doctors and institutions in the representatives' territory, as
9 discussed further below.

10 25. Purdue designed its seminars, trainings and "educational" programs for doctors,
11 pharmacists and nurses to serve the same goals as Purdue's office sales visits: promote
12 OxyContin as the opioid of choice, get healthcare professionals "comfortable" with prescribing
13 high strength narcotic opioids, and ultimately increase OxyContin prescriptions.
14

15 26. Regardless of the promotion medium, Purdue and its sales representatives
16 echoed several simple OxyContin sales messages, consistently reflected in Purdue's
17 advertisements, marketing plans and instructions to sales representatives. With respect to
18 encouraging doctors to prescribe OxyContin, Purdue sought to:

- 19 • "enhance the acceptance of opioids for non-cancer pain," and, with respect to
20 OxyContin, avoid any stigma attached to use of opiates;
- 21 • expand OxyContin tablets use in non-malignant pain market by positioning it as
22 "the one to start with and the one to stay with;"
- 23 • establish OxyContin as the first-line choice at Step 2 of the WHO pain ladder
(mild to moderate pain);
- 24 • increase the use of OxyContin tablets for a wide variety of conditions, and for
25 acute and sub-acute pain (e.g., "post-op pain, trauma, fractures"); and
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- encourage assessment of pain by physicians and communication of pain by patients, and attach an emotional aspect to non-cancer pain so physicians treat it more aggressively.

27. With respect to the characteristics of OxyContin itself, Purdue's marketing emphasized:

- that OxyContin is strong ("It Works");
- the duration of pain control -- that unlike other oxycodone medication, OxyContin need only be taken every 12 hours;
- the convenience of 12 hour dosing as compared to 4 or 6 hour analgesics (print ads showing six dosage cups vs. two and stating "the hard way vs. the easy way");
- that OxyContin acts quickly - that the onset of analgesia is within one hour in most patients; and
- that OxyContin was "appropriate for a wide range of patients."

28. Purdue promoted OxyContin to a wide variety of doctors, without regard for their training or experience prescribing opioids, encouraging OxyContin for an ever-increasing list of conditions, and patient types. While expanding the market in this way, Purdue failed to adequately account for known health and safety risks of OxyContin, especially the risks of OxyContin abuse, dependence, addiction and diversion.

Purdue's Marketing Strategy was to Steadily Expand OxyContin Usage from Cancer Pain Treatment to a Wide Array of Ailments

29. At the outset of the OxyContin launch, Purdue briefly marketed OxyContin principally for treatment of chronic pain in cancer patients. That quickly changed. Beginning in 1996, Purdue consistently expanded: a) the types of doctors and healthcare professionals to whom it promotes OxyContin; b) the classes of patients for whom it encourages OxyContin to be prescribed; and c) the array of diseases and types of pain for which it promotes OxyContin use.

1 30. One step in Purdue's plan to expand OxyContin use to all sorts of pain was its
2 decision to focus its sales efforts on primary care physicians ("PCPs").

3 31. Purdue targeted PCPs as a fruitful avenue to increased OxyContin sales. Sales
4 representatives visited thousands of primary care physicians and sought to convince them that
5 OxyContin was an appropriate first-line painkiller for a wide variety of ailments. More than
6 half of doctor visits by Purdue sales reps were to PCPs. The aggressive marketing to PCPs
7 paid off: Since 2002, PCPs have accounted for nearly half of all OxyContin prescriptions.
8

9 32. Purdue's promotional efforts also targeted additional types of physicians,
10 eventually including surgeons, gerontologists, rheumatologists, orthopedics, arthritis
11 specialists, obstetricians and gynecologists, emergency medicine physicians, and dentists.
12 Purdue failed to take meaningful steps to educate these doctors on the risks of opioid use,
13 abuse, addiction and diversion. Instead, Purdue repeated its simple sales messages: pain is
14 undertreated, OxyContin provides easy dosing and prompt relief, and is the "one to start with
15 and to stay with."
16

17 33. Purdue consistently expanded the pain ailments for which it aggressively
18 promoted OxyContin, without a concomitant focus on limiting OxyContin to serious and
19 prolonged pain.
20

21 34. As Purdue's promotional activities expanded the proposed uses for OxyContin -
22 to include many diseases and many types of pain - Purdue's marketing strategy minimized
23 OxyContin's risks. Instead of recommending caution in the use of a Schedule II narcotic with
24 an abuse profile similar to morphine, Purdue in essence pitched OxyContin as simply a
25 powerful pain reliever - for many types of pain and for many types sorts of patients - with few
26

1 precautions to guard against its capacity for abuse, dependence, addiction and diversion.

2 35. Purdue also failed to closely follow appropriate step therapy and instead
3 promoted OxyContin as the first-line pain reliever that could be used to treat all levels of pain -
4 “the one to start with and stay with” and “the easy way.”
5

6 36. Purdue’s sales strategy to expand OxyContin’s prescriber base and patient
7 population was successful. Within years of its launch and through the present, OxyContin was
8 and is prescribed by a wide range of doctors for a wide range of pain ailments.

9 **While Expanding the Prescriber Base and Usage of OxyContin,**
10 **Purdue Failed to Adequately Focus on OxyContin’s Health and Safety Risks,**
11 **Especially the Risks Related to Abuse and Diversion**

12 37. From its product launch, Purdue knew that OxyContin was prone to abuse,
13 dependence, addiction and diversion. But the linchpin of Purdue’s marketing strategy was to
14 distinguish OxyContin from other opioids and their well known risk of abuse, and to avoid the
15 stigma attached to these other opioids, particularly morphine. Purdue’s sales strategy focused
16 on getting doctors “comfortable” with prescribing OxyContin, even though prescribing opioids
17 warrants that doctors exercise caution, and OxyContin did not warrant different treatment.

18 38. In 2001, amidst significant media coverage of widespread OxyContin abuse,
19 diversion and addiction, the FDA required Purdue to significantly alter its label to provide a so-
20 called “black box” warning, including the following:

21 **Warning: OxyContin is an opioid agonist and a Schedule II controlled**
22 **substance with an abuse liability similar to morphine.**

23 **OxyContin Tablets are to be swallowed whole, and are not to be broken,**
24 **chewed or crushed. Taking broken, chewed or crushed OxyContin Tablets**
25 **leads to rapid release and absorption of a potentially fatal dose of oxycodone.**
26

1 39. Even after the FDA required Purdue to bolster its OxyContin warning, Purdue
2 continued to minimize the risks of abuse, addiction and diversion in its marketing. Instead,
3 Purdue repeated its message that pain is undertreated, that patients deserve opioid treatment,
4 and that OxyContin is the answer. Any meaningful message on the risks of abuse, addiction
5 and diversion would have undermined Purdue's sales objectives, and Purdue avoided it.
6

7 40. Purdue sought to portray "addiction" to opioids as exceedingly rare. By way of
8 example, Purdue's videotape "From One Patient to Another," advised patients that "Less than
9 1% of patients taking opioids actually become addicted." A Purdue pamphlet entitled
10 "Counseling Your Patients and Families Regarding the Use of Opioids," stated: "Many
11 patients - and family members - will be surprised to discover that fewer than 1% of opioid-
12 using patients become addicted." Purdue's focus on "addiction," narrowly defined, to the
13 exclusion of broader concepts of psychological dependence, physical dependence, tolerance
14 and abuse, made its representations misleading.
15

16 41. If doctors expressed concern over using OxyContin due to its capacity for
17 abuse, dependence or addiction, Purdue trained its sales representatives to avoid and minimize
18 those concerns.
19

20 42. Although Purdue, in response to public scrutiny of widespread OxyContin
21 abuse, has claimed to implement programs designed to guard against diversion and abuse, it
22 has continued to try to convince doctors that their concerns of addiction, dependence and abuse
23 are misplaced.
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1 **Purdue Employed a Sales Approach and Incentive System that Exacerbated, Rather**
2 **Than Guarded Against, the Risk of OxyContin Abuse, Addiction and Diversion**

3 43. Purdue sales representatives were compensated in large measure for increasing
4 the volume of OxyContin prescribed and sold. Purdue's sales goals were plain: to increase the
5 number of doctors prescribing Oxycontin, to increase the number of prescriptions written by
6 each, and to increase dosages of OxyContin. Purdue's sales approach and incentive system
7 failed to adequately balance Purdue's desire for increased OxyContin sales with safeguards
8 against OxyContin abuse, addiction and diversion.

9 44. Both through its compensation structure and through its sales managers, Purdue
10 cultivated a high pressure environment for its sales representatives. This pressure to increase
11 sales was not properly balanced against public safety and failed to account for the known risks
12 of OxyContin.

13 45. Purdue also instructed its sales representatives to focus their sales efforts on
14 those doctors who already prescribed the greatest amount of OxyContin, urging them to write
15 more prescriptions for more patients. Using detailed prescribing data on doctors, Purdue sales
16 representatives strove to increase "new starts" and increase prescription volume by these key
17 prescribers.
18

19 46. These aspects of Purdue's sales and incentive system all served to promote, not
20 guard against, OxyContin abuse, diversion and addiction.
21

22 47. Purdue also failed to use its detailed prescribing information on doctors to guard
23 against OxyContin abuse and diversion. Purdue, since OxyContin's launch, purchased detailed
24 prescribing data from IMS Health ("IMS data"), showing the prescribing history and patterns
25 of doctors, including the number of OxyContin prescriptions written, the dosages, as well as
26

1 the same prescribing information with respect to competing opioids and other drugs. Purdue
2 provides each sales representative this prescribing information for target doctors in their
3 territory.

4 48. Purdue could have used the prescribing data to readily identify potential sources
5 of abuse and diversion, such as "pill mills" that divert OxyContin to the illicit street market.
6 Purdue then could have employed meaningful internal measures to guard against abuse and
7 diversion risks. For instance, Purdue could have visited those doctors to review pain
8 documentation practices or otherwise protect against potential abuse or diversion. Or, the
9 company could have shared with law enforcement those prescribing patterns that evidenced a
10 risk of abuse or diversion. For years, Purdue did not take those steps.

11 49. Purdue, notwithstanding its marketing claims focused on fighting abuse and
12 diversion, declined to use the IMS prescribing data to protect against abuse and diversion risks.
13 Purdue sales representatives instead targeted the highest prescribers and encouraged them to
14 prescribe more OxyContin, in larger doses, to more patients. Purdue's marketing practices
15 thus exacerbated the abuse and diversion risks.

16 50. Purdue's OxyContin marketing resulted in dramatic increases in OxyContin
17 prescriptions.

18 51. On or about October 12, 2004, Purdue entered into a tolling agreement with the
19 State of Washington with respect to Washington's claims against Purdue, tolling the
20 application of the statute of limitations from May 12, 2004 through the filing of this
21 Complaint.
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1 CAUSES OF ACTION

2 **Count One**

3 (Unfair or Deceptive Acts or Practices in violation of chapter 19.86 RCW)

4 52. The State of Washington incorporates by reference the allegations of paragraphs
5 1 through 51 of the Complaint.

6 53. Purdue engaged in unfair or deceptive acts or practices in its marketing,
7 promotion and sale of OxyContin, including without limitation:

- 8
- 9 a) aggressively marketing OxyContin to a broad variety of doctors and patients,
10 for an ever expanding array of ailments, sometimes contrary to its label and
11 indications, while failing to adequately disclose and reasonably warn of and
12 guard against the health and safety risks associated with OxyContin, including
13 the risks associated with misuse, abuse, dependence, addiction and diversion;
 - 14 b) avoiding or minimizing the known risks of OxyContin, including the risks of
15 abuse, dependence, addiction and diversion; and
 - 16 c) employing a sales and incentive program that failed to reasonably guard against
17 OxyContin abuse and diversion.

18 54. Purdue knew or should have known that its conduct was unfair or deceptive in
19 violation of RCW 19.86.020.

20 RELIEF REQUESTED

21 WHEREFORE, the State of Washington requests that this Court:

22 1. Enter judgment in favor of the State of Washington and against the defendants
23 under chapter 19.86 RCW, and permanently enjoin Purdue from engaging in unfair or
24 deceptive acts and practices in the marketing and promotion of OxyContin;

25 2. Order the defendants to pay civil penalties for each violation of chapter 19.86
26 RCW;

3. Order defendants to pay the costs of investigation and litigation, including
attorneys' fees, pursuant to chapter 19.86 RCW; and

