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Opioid MDL Special Master Sets Data Production Guidelines

By **Emily Field**

Law360 (January 28, 2020, 6:25 PM EST) -- A special master in the opioid multidistrict litigation in Ohio on Monday outlined what data pharmacies have to turn over to local governments in the litigation, including information on non-opioids that are associated with "doctor-shopping."

Special Master David Cohen said that the pharmacies have to produce data for 14 benzodiazepines and four muscle relaxers, along with the prescription data for opioids. According to the Ohio Board of Pharmacy, the most glaring "red flag" combinations involve mixing opioids with a benzodiazepine and a muscle relaxer, Cohen said.

The pharmacies had previously agreed to release data for a sedative called alprazolam and for one type of muscle relaxant, carisoprodol, since it's known that patients who get those drugs along with opioids are likely to be addicts who are doctor-shopping and have questionable prescriptions, but insisted they weren't required to produce data for other non-opioids, according to Cohen.

Cohen did find that the pharmacies, which include Rite Aid and CVS Health Corp., don't have to provide information on sleep aids, as requested by the counties in the litigation.

"The materials submitted to the special master do not support inclusion of sleep aid combinations in the 'red flag cocktail menu,'" Cohen said.

A spokesman for Rite Aid declined to comment.

"Special Master Cohen's order recognizes that we are entitled to discovery related to the chain pharmacies failure [to] monitor the so-called 'holy trinity' combination of opioids and non-opioids, which were the classic red flags for improper drug dispensing," Hunter Shkolnik of Napoli Shkolnik PLLC, a top plaintiffs lawyer in the MDL, told Law360 on Tuesday. "They closed their eyes to these flags and it allowed pills to flow onto the streets."

In **late December**, U.S. District Judge Dan Polster ordered the pharmacies to turn over 14 years' worth of nationwide opioid prescription records to the cities and counties in the litigation over the opioid epidemic.

Judge Polster told the pharmacies to first turn over records for Cuyahoga and Summit counties.

Those counties are scheduled to conduct the first trial in the MDL in October, against the pharmacy defendants. An earlier trial against drug manufacturers that had been scheduled for October 2019 was scuttled after those defendants settled with the counties for \$260 million.

In response, the pharmacies **launched** another attack on the judge, telling the Sixth Circuit on Jan. 17 that he has "repeatedly disregarded" federal court rules and should be ordered to follow them.

The pharmacies told the Sixth Circuit in a mandamus petition that Judge Polster made this decision of his own accord, with little regard for the significant privacy risks that producing these records would involve.

And instead of justifying the discovery as relevant to the claims in the bellwether cases in Cuyahoga and Summit counties in Ohio, the judge assumed that the nationwide data might be relevant to other unspecified cases in the MDL, the pharmacies said.

"Requiring the production of 14 years of national dispensing data creates a significant risk that patients' highly sensitive and private health information would become publicly available without their knowledge or consent," a Walgreen Co. spokesman told Law360 on Tuesday. "Together with the data of the other defendants, the order needlessly requires the production of data for tens of millions of patients who have nothing to do with the two Ohio counties that are plaintiffs in this case, and which the court has acknowledged are not necessary for the case."

The pharmacies previously made an **unsuccessful bid** to remove Judge Polster from the massive MDL and have also **complained** that he makes decisions before allowing them to weigh in.

Representatives for the other parties didn't immediately respond to requests for comment on Tuesday.

The MDL is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Ryan Boysen. Editing by Jay Jackson Jr.

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