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BEFORE THE DIVISION OF CONSUMER PROTECTION OF THE UTAH DEPARTMENT OF COMMERCE

IN THE MATTER OF: **PURDUE PHARMA L.P.; PURDUE PHARMA INC.; THE PURDUE FREDERICK COMPANY INC.; RICHARD SACKLER, M.D.**; and **KATHE SACKLER, M.D.,** **Respondents.**	**REQUEST FOR LEAVE TO ISSUE NOTICE OF ORAL AND VIDEO DEPOSITION OF THE STATE OF UTAH AND FOR EXPEDITED CONSIDERATION** **DCP Legal File No. CP-2019-005** **DCP Case No. 107102**

Pursuant to Utah Administrative Code R151-4-602(1), -603(2)(a), -603(2)(b)(ii)–(iii), and -603(4)(d), Respondents Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (collectively, "Purdue"), by and through the undersigned counsel, submit this *Request for Leave to Issue Notice of Deposition of the State of Utah and for Expedited Consideration*, and allege the following in support thereof:

1. Purdue respectfully requests leave to depose the State of Utah (the "State") through representatives chosen by the State or the State's counsel (the Office of the Attorney General), on the topics set out in the proposed Notice of Oral and Video Deposition attached hereto as **Exhibit 1**, pursuant to Utah Administrative Code R151-4-602(1), -603(2)(a), and -603(2)(b)(ii)–(iii). Such depositions are explicitly permitted by the Rules governing the Division of Consumer Protection (the "Division"), UTAH ADMIN. CODE R151-4-603(4)(d), and routine in civil cases in Utah district courts. *See* UTAH R. CIV. P. 30(b)(6) ("A party may name as the witness a corporation, a partnership, an association, or a governmental agency, describe with reasonable particularity the matters on which questioning is requested, and direct the organization to designate one or more officers, directors, managing agents, or other persons to testify on its behalf."). Purdue has noticed such depositions in similar opioid-related cases, including an action brought by the South Carolina Attorney General, who is represented by the same private counsel as the Division here.

2. Good cause exists for this Request because Purdue reasonably believes that the State and its agencies have knowledge of matters probative of the Division's claims and Purdue's defenses, including, but not limited to, the alleged opioid abuse crisis that is the subject of this administrative proceeding, its causes, and Purdue's statute-of-limitations defense. On April 23, 2019, the Presiding Officer ordered the Division to include with its Initial Disclosures a good faith list of the representations that form the basis of the Division's claims. The Division's list includes approximately 150 representations, all of which were specifically approved by the FDA, occurred well over ten years ago, and/or have no connection to Utah; some are unconnected to any time, place, or person whatsoever. Additionally, the Division did not begin producing documents to Purdue until July 24, 2019—two months after Purdue first served its Requests for Production. Despite this lack of discovery, Purdue has been diligently collecting and investigating publicly

available documents concerning the State's opioid-related knowledge and activities as far back as the 1990s. Purdue has managed to put together some of the pieces of the State's extensive regulation of opioid prescribing practices and its responses to Utah's opioid abuse crisis, including (but not limited to) the State's implementation and funding (or lack of funding) of its Controlled Substances Database beginning in 1995, and a massive and ongoing legislative effort to overhaul the State's opioid prescribing Guidelines beginning in 2007. These documents confirm that depositions are necessary to determine the State's knowledge of and actions relating to prescription opioid medications and the causes and effects of Utah's opioid abuse crisis.

3. Moreover, the Division's counsel has represented to Purdue's counsel that requests for informal interviews of witnesses will be futile in this matter. Indeed, because the State and its agencies have an incentive to testify adversely to Purdue, any questioning not taken under oath would serve no meaningful purpose.

4. Purdue respectfully seeks expedited consideration of this Request. The State no doubt will require time to identify and prepare appropriate representatives, many of whom must testify on matters going back over two decades, and Purdue will require time to conduct a follow-up investigation of facts revealed during the depositions. It is therefore essential that the State receive the Notice and the Parties schedule the deposition(s) as soon as possible.

IT IS THEREFORE REQUESTED that the Presiding Officer grant Purdue leave to issue the attached Notice of Oral and Video Deposition of the State of Utah, pursuant to Utah Administrative Code R151-4-602(1), -603(2)(a), -603(2)(b)(ii)–(iii), and -603(4)(d).

DATED: July 31, 2019.

SNELL & WILMER L.L.P.

/s/ Elisabeth M. McOmber
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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2019, I caused a copy of the foregoing to be served by electronic mail upon the following:

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/s/ Annika L. Jones

EXHIBIT 1

BEFORE THE DIVISION OF CONSUMER PROTECTION OF THE UTAH DEPARTMENT OF COMMERCE

IN THE MATTER OF: **PURDUE PHARMA L.P.; PURDUE PHARMA INC.; THE PURDUE FREDERICK COMPANY INC.; RICHARD SACKLER, M.D.**; and **KATHE SACKLER, M.D.,** **Respondents.**	**NOTICE OF ORAL AND VIDEO DEPOSITION OF THE STATE OF UTAH** **DCP Legal File No. CP-2019-005** **DCP Case No. 107102**

TO: THE STATE OF UTAH AND THE OFFICE OF THE UTAH ATTORNEY GENERAL.

PLEASE TAKE NOTICE that, pursuant to Utah Administrative Code R151-4-602(1), -603(2)(a), -603(2)(b)(ii)–(iii), and -603(4)(d) and Utah Rule of Civil Procedure 30(b)(6), Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company Inc. (collectively, "Purdue"), by and through the undersigned counsel, will take the videotaped deposition of the State of Utah on the matters listed in **Exhibit A**, attached hereto. The deposition will commence at 9:00 a.m. on Monday, August 19, 2019, at Snell & Wilmer, LLP, 15 W. South Temple, Suite 1200, Salt Lake City, Utah 84101.

Pursuant to Utah Administrative Code R151-4-603(4)(d), the State of Utah shall designate one or more of its officers, directors, managing agents, or other persons who consent to testify on its behalf concerning the matters identified in Exhibit A. The persons so designated shall testify as to all information related to the matters listed in Exhibit A that is known or reasonably available to the State.

The deposition shall be recorded by stenographic and videographic means and taken before a person authorized by law to administer oaths, pursuant to Utah Administrative Code R151-4-

603(2)(a), and -603(2)(b)(ii)–(iii). The videotaped deposition shall continue from day-to-day, excluding Saturdays, Sundays, and holidays recognized by the Presiding Officer, until the examination is completed.

DATED: July 31, 2019.

SNELL & WILMER L.L.P.

/s/ Elisabeth M. McOmber
Elisabeth M. McOmber
Katherine R. Nichols
Annika L. Jones

Will Sachse
Erik Snapp (*pro hac vice forthcoming*)
DECHERT LLP

Attorneys for Respondents Purdue Pharma L.P., Purdue Pharma Inc., and The Purdue Frederick Company

EXHIBIT A

MATTERS OF INQUIRY

1. The Utah State Legislature's budgeting decisions related to reducing abuse, addiction and death associated with prescription pain medication, including but not limited to the decision to increase funding to the Department of Health ("DOH") in 2007, decrease DOH funding from 2010 to 2014, and increase DOH funding from 2015 to the present, and for each decision: (1) information and data sources considered in and the rationale for determining the funding in each year; (2) the specific amount of funds allocated each year; (3) the state agencies, departments, or divisions that received increased funding; (4) any cost vs. benefit and/or outcomes analyses; and (5) any analysis or discussion of other state needs that affecting, , in whole or part, DOH funding.

2. The Office of the Legislative Auditor General's investigations, findings, recommendations, and conclusions regarding prescription pain medication abuse, addiction, and death in Utah.

3. The Utah Prescription Pain Medication Program ("PPMP"), including: (1) its purpose; (2) persons responsible for the decisions of the PPMP; (3) its budget; (4) information and data sources considered when determining which actions and initiatives to pursue through or in conjunction with the PPMP; (5) actions the PPMP has taken or recommended generally; (6) the PPMP's role in developing Utah's 2009 *Utah Clinical Guidelines on Prescribing Opioids*, 2016 updates, and/or 2018 *Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain* (collectively the "Guidelines"); and (7) actions considered or recommended but not taken.

4. The Guidelines, including: (1) the selection of persons responsible for the creation and publication; (2) information and data sources considered; (3) the legislative focus that precipitated the Guidelines (2007 HB 137; 2018 HB 192), including but not limited to reports, discussions, objections, or endorsements that influenced the passage of each house bill and each guideline; (4) the content/substance; (5) recommendations considered but not included; (6) efforts by the State in assessing the continued medical appropriateness of the Guidelines; and (7) interactions with others (within or outside of Utah).

5. The State's (or any entity, department or division associated with the State's) consideration, endorsement (in whole or part), and/or rejection of the 2004 prescribing guidelines distributed by the Federation of State Medical Boards and/or any prior iterations thereof.

6. The State's (or any entity, department or division associated with the State's) consideration, endorsement (in whole or part), and/or rejection of the CDC's "Guidelines for Prescribing Opioids for Chronic Pain."

7. The Utah Attorney General's "Opioid Task Force" including: (1) its formation; (2) persons responsible for its creation and implementation; (3) information and data sources considered in connection with its formation as well as its operation; (4) recommendations made and/or actions taken (5) actions considered and not taken; (6) budgetary support and/or constraints; and (7) interactions with others (within or outside of Utah).

8. Utah's prescription medication "Take Back Program" including: (1) its purpose and formation; (2) persons responsible for its creation and implementation; (3) information and data sources considered in connection with its formation as well as its operation; (4) recommendations made and/or actions taken; (5) actions considered and not taken; (6) budgetary support and/or constraints; (7) interactions with others (within or outside of Utah).

9. The Utah Violence & Injury Prevention Program ("VIPP"), including: (1) information and data sources considered when analyzing the impact of opioid prescribing including, but not limited to, sources and data considered in connection with VIPP's "Opioid Prescribing Practices in Utah" publication(s); (2) recommendations made and/or actions taken with respect to opioid-related injuries, including but not limited to, VIPP's "Utah Coalition for Opioid Overdose Prevention," "Utah Pharmaceutical Drug Crime Project," and "Utah Pharmaceutical Drug Community Project"; (3) actions and recommendations considered but not taken with respect to opioid-related injuries; (4) budgetary support and/or constraints; and (5) interactions with others (within or outside of Utah), including but not limited to, the Intermountain Opioid Community Collaborative.

10. Any public service announcements, public education initiatives, and/or media campaigns conducted by the State (or any entity, department or division associated with the State) relating to opioid awareness specifically and drug abuse and misuse generally, including but not limited to the "Use Only as Directed" and "Stop the Opidemic" initiatives, and for each: (1) persons responsible for creating, recommending, and implementing each initiative; (2) information and data sources considered in and rationale for each initiative; (3) initiatives considered but not made or undertaken; (4) the role of budgetary support and/or constraints; and (5) analysis of any data or information concerning the results or effects of each initiative.

11. The investigation, prosecution, and/or discipline of physicians, pharmacists, clinics, or other health care providers in the State relating to prescription pain medication including: (1) the standards, practices, and policies that governed such investigations (2) the facts underlying each investigation, prosecution, or disciplinary action; (3) the persons responsible for initiating the investigation, prosecution, or disciplinary action; (4) the information and data sources considered and the rationale for initiating the investigation, prosecution, or disciplinary action; (5) the outcome of each investigation, prosecution, and disciplinary action; (6) the communication of those outcomes to the public or to any pharmaceutical manufacturer, distributor, dispenser, or prescriber; and (7) any investigations, prosecutions, and disciplinary actions considered but not initiated and/or completed.

12. The State's (or any entity, department or division associated with the State's) participation and involvement in any action by the National Association of Attorneys General ("NAAG") relating to prescription pain medication, including but not limited to the 2005 Letter *Re: DEA Withdrawal of Pain Management Prescription Guidelines* from the NAAG to the Drug Enforcement Administration.

13. The Office of Legislative Research and General Counsel's *Opioid Misuse: Options for Prevention, Identification, and Treatment* (Apr. 21, 2016) including: (1) persons responsible for conceiving and directing its creation; (2) the facts, data, and other factors considered in and rationale for conceiving and directing its creation; (3) information and data sources considered; (4) options considered but not included; and (5) the results and/or actions taken..

14. The Utah Controlled Substance Database Program ("CSD"), including: (1) persons responsible for its creation and enforcement, (2) the amount and type of data collected; (3) the number of practicing physicians and/or pharmacists using the CSD; (4) the number of individuals with access to the CSD; (5) funding received by the state or federal government; (6) information and data sources considered when determining CSD requirements, including the review of other prescription drug monitoring programs in other states; (7) data-collection and compliance requirements for physicians and pharmacies; (8) actions or compliance requirements considered but not imposed; (9) support or opposition from pharmacies or physicians to the CSD's requirements; and (10) interactions with others (within or outside of Utah).

15. The policies, procedures, operations, and activities of the DOH, or its divisions, related to prescription pain medications specifically, and licit and illicit drug misuse and abuse generally, including: (1) any collection, investigation, or analysis of relevant data and the resulting findings; (2) budgetary support and/or constraints; (3) any follow-up report, recommendation, or action, including C. Porucznik, *Studying Adverse Events Related to Prescription Opioids: The Utah Experience* (2011); and (4) any investigation, collection, or analysis that was considered but not conducted.

16. The policies, procedures, operations, and activities of the Office of the Medical Examiner ("OME"), related to prescription pain medications specifically, and licit and illicit drug misuse and abuse generally, including: (1) drug testing, (2) determining and reporting cause of death, (3) determining and reporting association between death and particular drugs or drug categories; and (4) determining and reporting suicides vs. other unintentional causes of death.

17. The DOH's 2005 Workgroup that produced the report authored by David N. Sundwall and Robert T. Rolfs titled: *Prescription Opioid Medication Deaths in Utah, Summary of Findings*, Workgroup Meeting (Oct. 24–25, 2005), including: (1) its formation and purpose; (2) persons responsible for its creation and implementation; (3) information and data sources considered in connection with its formation and operation; (4) recommendations made and/or actions taken; (5) actions considered and not taken; (6) budgetary support and/or constraints; and (7) follow-up workgroup meetings or investigations related to abuse, addiction, and death associated with prescription pain medication in Utah.

18. The policies, procedures, operations, and activities of the Utah Department of Human Services ("DHS"), or its divisions, including the Division of Substance Abuse & Mental Health ("DSAMH"), related to prescription pain medications specifically, and licit and illicit drug misuse and abuse generally, including: (1) any collection, investigation, or

analysis of relevant data and the resulting findings, including those in the DSAHM *Annual Report, Executive Summary*, or equivalent; (2) budgetary support and/or constraints; (3) any follow-up report, recommendation, or action; and (4) any investigation, collection, or analysis that was considered but not conducted.

19. The Division of Disease Control and Prevention ("DDCP"), including: (1) any collection, investigation, or analysis of facts or data relating to abuse, addiction, and death associated with prescription pain medication; (2) information and data sources considered; (3) budgetary support and/or constraints; (4) the results of any such collection, investigation, or analysis; (5) the disbursement or distribution of the results in a report or otherwise; (6) any follow-up report, recommendation, or action; and (7) any investigation, collection, or analysis that was considered but not conducted.

20. County-by-county differences in prescribing, abuse, addiction, and death associated with prescription pain medications specifically and licit and illicit drugs generally, including: (1) the State's collection and/or analysis of such data; (2) information and data sources considered in the State's collection of data; (3) efforts to collect information and data that were considered but not undertaken; (4) the persons responsible for the State's decision(s); and (5) the substance of any findings or conclusions.

21. The policies, procedures, operations, and activities of any State-run healthcare facility, including prisons, hospitals, and emergency rooms, related to prescription pain medications specifically, and licit and illicit drug misuse and abuse generally, including: (1) the diagnosis and treatment of pain and use of pain medications, including prescription opioids; (2) the use of "pain scales," and of pain "the fifth vital sign;" (3) the use of patient satisfaction surveys or similar evaluation tools; and (4) restrictions on detailing by pharmaceutical manufacturers, including manufacturers of prescription opioids.

22. Complaints, reports, or petitions submitted from any source to the Utah Division of Consumer Protection, relating to prescription opioid marketing, and as to each: (1) the substance of the complaint, report, or petition and the date on which the State received it; (2) the persons responsible for reviewing, evaluating, and addressing the complaint, report, or petition; (3) any and all information considered and the initial or final recommendation or decision; and (4) any reporting to or communications with any company with regard to its opioid marketing practices.

23. The Attorney General Office's knowledge of the May 2007 Guilty Plea Agreement in the matter of *United States v. The Purdue Frederick Co., Inc.*, 1:07-cr-29 (W.D. Va. May 10, 2007), and any settlement agreement(s) or consent judgment(s) entered into by Purdue and any State AG other than the AG of Utah.

24. The policies, procedures, operations, and activities associated with Utah's Medicaid program related to prescription pain medications, including: (1) decision(s) to include or exclude any prescription pain medication in a formulary or preferred drug list and to require prior authorization before reimbursing prescriptions for any pain medication, including but not limited to the decisions of any Pharmacy and Therapeutics ("P&T") Committee or Drug Utilization Review Board ("DURB"); (2) information and data sources considered for each

decision, including budgetary support and/or constraints; (3) information and data considered and rationale for approving or not approving prescriptions for any prescription pain medication submitted for reimbursement; (4) any prospective or retrospective drug utilization reviews and the results of those reviews; and (5) the State's involvement in, and actions taken with, the Sovereign States Drug Consortium ("SSDC") relating to prescription pain medication, including but not limited to the SSDC's role in any formulary or rebate policies or decisions.

25. The policies, procedures, operations, and activities associated with the Utah Employee Benefits and Insurance Program related to prescription pain medications, including: (1) decision(s) to include or exclude any prescription pain medication in a formulary or preferred drug list and to require prior authorization before reimbursing prescriptions for any pain medication, including but not limited to the decisions of any P&T Committee or DURB; (2) information and data sources considered for each decision, including budgetary support and/or constraints; (3) information and data considered and rationale for approving or not approving prescriptions for any prescription pain medication submitted for reimbursement; and (4) any prospective or retrospective drug utilization reviews and the results of those reviews.

26. The policies, procedures, operations, and activities associated with Utah Workers' Compensation Insurance related to prescription pain medications, including: (1) decision(s) to include or exclude any prescription pain medication in a formulary or preferred drug list and to require prior authorization before reimbursing prescriptions for any pain medication, including but not limited to the decisions of any P&T Committee or DURB; (2) information and data sources considered for each decision, including budgetary support and/or constraints; (3) information and data considered and rationale for approving or not approving prescriptions for any prescription pain medication submitted for reimbursement; and (4) any prospective or retrospective drug utilization reviews and the results of those reviews.

27. The policies, procedures, operations, and activities associated with the Children's Health Insurance Program related to prescription pain medications, including: (1) decision(s) to include or exclude any prescription pain medication in a formulary or preferred drug list and to require prior authorization before reimbursing prescriptions for any pain medication, including but not limited to the decisions of any P&T Committee or DURB; (2) information and data sources considered for each decision, including budgetary support and/or constraints; (3) information and data considered and rationale for approving or not approving prescriptions for any prescription pain medication submitted for reimbursement; and (4) any prospective or retrospective drug utilization reviews and the results of those reviews.

28. The State's funding of addiction or overdose treatment and/or prevention, including: (1) persons responsible; (2) information and data sources considered; (3) analysis of facts and data; (4) how dollars were allocated, including but not limited to medical and law enforcement efforts; (5) options that were considered but not provided or funded; and (6) any collection and analysis of data or information concerning the results of treatment or prevention options provided or funded.

29. Neonatal Abstinence Syndrome ("NAS"), including: (1) the State's knowledge, collection, investigation, and analysis of facts and data concerning NAS or its causes, including but not limited to the State's knowledge of persons diagnosed with NAS who have been in the State's care or custody; and (2) the results of any analysis concerning NAS and its causes.

30. Crimes in Utah and/or changes in crime rates that the State believes are associated with prescription pain medications including: (1) information and data sources considered and how they were collected and analyzed; (2) the persons responsible for the collection and analyses; (3) any conclusions reached and actions resulting therefrom; (4) any actions considered by the State as a result of the State's findings, but not taken; and (5) any specific findings or conclusions specifically linking alleged prescription pain medication crimes to alleged false or misleading statements by Purdue.