

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT

C.A. No. 24-0508A

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

CVS PHARMACY, INC.,

Defendant.

COMPLAINT

Plaintiff, the Commonwealth of Massachusetts, brings this action against Defendant CVS Pharmacy, Inc. pursuant to G.L. c. 93A, § 2 and to the common law for illegal, deceptive promotion of dangerous drugs that caused Massachusetts residents to suffer, overdose and, die.

I. JURISDICTION AND STATUTORY AUTHORITY

1. This Court has jurisdiction over the subject matter of this suit pursuant to G.L. c. 93A, § 4 and G.L. c. 214, § 1.
2. This Court has jurisdiction over the Defendant pursuant to G.L. c. 223A, § 3(a)-(d).
3. Venue is proper pursuant to G.L. c. 93A, § 4 and G.L. c. 223, § 5.

II. PARTIES

4. The plaintiff is the Commonwealth of Massachusetts (the "Commonwealth") represented by Attorney General Andrea Joy Campbell, who brings this action in the public interest pursuant to G.L. c. 93A and G.L. c. 12.

5. Defendant CVS Pharmacy, Inc. ("CVS" or "Defendant") is a corporation organized under the laws of Rhode Island and has its principal place of business in Rhode Island, at One CVS Drive, Woonsocket, Rhode Island 02895.

6. Defendant conducts business in the Commonwealth.

7. Whenever this Complaint alleges that Defendant did any act, it means that Defendant:

- a. Performed or participated in the act; or
- b. Its subsidiaries, officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of Defendant.

### **III. FACTUAL ALLEGATIONS**

8. The United States saw a nearly four-fold increase in the annual number of opioid pills dispensed by pharmacies between 1999 and 2014. This increase contributed to numerous instances of opioid abuse, dependence, addiction, and overdose deaths in the Commonwealth. It also contributed to a sharp increase in the use of even more powerful drugs such as fentanyl and heroin, which are sometimes used by themselves and other times used in combination with prescription opioids. Fentanyl and heroin use exacerbated opioid abuse, dependence, addiction, and overdose deaths in the Commonwealth.

9. The surge in the use of prescription opioids has caused the current public health crisis through the diversion of prescription opioids from legitimate distribution channels to illegitimate and illegal channels. Diversion includes, for example, forging prescriptions, using legitimate prescriptions to obtain pills that can be resold, and obtaining prescriptions from prescribers who are improperly profiting from unnecessary, unsafe, and illegitimate prescriptions.

10. The rise in the number of opioid pills dispensed by pharmacies and/or diverted to illegitimate and illegal channels caused a devastating increase in opioid abuse, dependence, addiction, and overdose deaths in the Commonwealth. Of the 18,061 people confirmed to have died of opioid-related overdoses in Massachusetts from January 2009 through September 2021, 12,372 filled prescriptions for Schedule II opioids dispensed by a Massachusetts pharmacy: more than 68%. Many of those patients filled prescriptions for hundreds, some thousands, of pills. Defendant contributed to this death toll significantly. Defendant dispensed opioids to 8,852 people who overdosed and died in Massachusetts—approximately 49% of the people confirmed to have died from opioid-related overdoses in Massachusetts from January 2009 through September 2021.

11. CVS regularly filled prescriptions for enormous amounts of opioids. For one Massachusetts resident, on the same day, CVS filled a 30-day prescription for 6 OxyContin 80mg pills—the highest dose—per day and another 30-day prescription for 32 oxycodone 30mg immediate release pills per day. These 30-day prescriptions together contained over **43 grams** of oxycodone, or 1.4 grams per day. In total, CVS filled more than 180 oxycodone prescriptions for this patient, totaling over **46,000 pills** containing **1.8 kilograms** of oxycodone. The patient later died of an opioid-related overdose.

12. Prescription opioids continue to kill thousands of people across the Commonwealth every year. In fact, opioid overdose deaths reached an all-time high in 2022.<sup>1</sup> Thousands more suffer from negative health consequences short of death and countless others have had their lives ruined by a friend or family member's addiction or death. Every community in the Commonwealth suffers from the opioid crisis.

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<sup>1</sup> See Massachusetts Dep't Pub. Health, Data Brief: Opioid Related Overdose Deaths among Massachusetts Residents at 1–2 (June 2023), <https://www.mass.gov/doc/opioid-related-overdose-deaths-among-ma-residents-june-2023/download>.

13. The federal Controlled Substances Act, along with the Commonwealth's parallel controlled substances law, G.L. c. 94C, was designed to "provide an interlocking trellis of laws which will enable government at all levels to more effectively control the [narcotic and dangerous drug] problem." Special Message to the Congress on Control of Narcotics and Dangerous Drugs, Pub. Papers of the Presidents of the United States: Richard Nixon, 1969, at 513, 514 (July 14, 1969).

14. A main objective of these laws was to establish a closed regulatory system for the legitimate handlers of controlled drugs that would prevent controlled substances from moving from legitimate channels to illegitimate channels, thereby guarding against diversion.

15. As a dispenser of opioids, Defendant played a crucial role in stopping the diversion of opioids. The law makes pharmacies and pharmacists the last line of defense in preventing the illegal diversion of controlled substances.

16. Specifically, the federal Controlled Substances Act, along with the Commonwealth's parallel controlled substances law, obligates pharmacies to practice their "corresponding responsibility" to dispense only legitimate prescriptions for controlled substances written for legitimate medical purposes. 21 C.F.R. § 1306.04(a); G.L. c. 94C, § 19(a).

17. To comply with its legal duty to dispense only legitimate opioid prescriptions written for legitimate medical purposes, a pharmacy must, among other things, engage in due diligence to identify opioid prescriptions that have one or more "red flags" that are indicia of diversion and resolve those red flags before dispensing a prescription.

18. Red flags can relate to the prescriber, the patient, and/or the physical prescription itself. Examples of red flags include, but are not limited to: (1) patients who seek to fill opioid prescriptions written by multiple doctors over a short period; (2) patients who seek to pay in cash

for an opioid prescription despite having insurance information on file; (3) opioid prescriptions that appear altered or photocopied; (4) opioid prescriptions that contain misspellings or non-standard abbreviations; or (5) opioid prescriptions written by a doctor located far away from the patient's residence or the pharmacy's location.

19. Chain pharmacy companies like Defendant have unique, real-time knowledge of opioid prescriptions dispensed by their thousands of pharmacy locations across the country. This allows chain pharmacies like Defendant to have access to, and the ability to track, aggregate, and maintain data related to suspicious opioid prescriptions with red flags. As a result of the red flag data available to Defendant, it has a unique ability to spot and guard against the diversion of opioids.

20. Defendant had the resources to implement systems to use its real time knowledge of its pharmacies' opioid ordering volume and prescription red flags to guard against diversion because of its enormous annual revenues. Yet Defendant did not timely implement such systems, and when it did, such systems were inadequate and ineffective, as described below.

21. Defendant failed to perform its corresponding responsibility adequately, as required by the federal and Commonwealth controlled substances laws, by implementing insufficient controls to identify and resolve signs of diversion.

22. Defendant had policies with the stated purpose of identifying suspicious opioid orders and conducting due diligence to resolve the suspicion. But Defendant frequently designed, or applied, its policies in such a manner that they were ineffective controls against diversion, thereby violating its legal obligations to guard against diversion of opioids by practicing its corresponding responsibility.

23. The sheer volume of diverted opioids has wreaked havoc throughout the Commonwealth.

24. Yet for numerous opioid prescriptions in the Commonwealth that resulted in one or more red flags, Defendant nevertheless dispensed the opioids without first making sufficient inquiries into the legitimacy of the prescriptions. Defendant also implemented policies in which its pharmacists were given insufficient time and resources to practice its corresponding responsibility, resulting in Defendant's pharmacists too often ignoring or insufficiently investigating the red flags that they did identify.

25. Year after year as its opioid dispensing increased and the opioid crisis grew, Defendant failed to practice its corresponding responsibility, including dispensing controlled substances without first resolving the red flags presented by suspicious prescriptions.

26. Defendant knew that its internal compliance program was inadequate to fulfill its anti-diversion duties pursuant to federal and state law.

27. Through its actions and inactions in connection with the dispensing of opioids, including those alleged above, Defendant materially contributed to the creation of an opioid addiction crisis that has injured, harmed, killed, and otherwise disrupted the lives of thousands of residents of the Commonwealth, as well as cost state, county, and municipal governments billions of dollars in expenditures to prevent, mitigate, and remedy the multitude of different societal harms and injuries that the opioid crisis has caused. Defendant knew, or in the exercise of reasonable care and diligence should have known, that its actions and inactions would lead to this result.

**FIRST CAUSE OF ACTION**  
**(Violations of G.L. c. 93A, § 2)**

28. The Commonwealth realleges each allegation above.

29. G.L. c. 93A, § 4 authorizes the Attorney General to bring an action to enjoin persons and entities engaged in trade or commerce from engaging in methods, acts, or practices that violate G.L. c. 93A, § 2.

30. At all times relevant to this Complaint, Defendant was engaged in trade or commerce.

31. At all times relevant to this Complaint, Defendant violated G.L. c. 93A, § 2 by engaging in unfair and deceptive acts and practices in connection with its dispensing of opioid-containing prescription drugs. Defendant's unfair or deceptive acts and practices include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against diversion of opioids in the Commonwealth; and
- b. Failing to practice its corresponding responsibility and dispensing opioids in the Commonwealth despite not resolving red flags indicating that prescriptions may be for illegitimate purposes.

32. Defendant's unfair and deceptive acts and practices resulted in substantial injury to Massachusetts consumers.

33. Defendant's misconduct was knowing and willful.

34. Each unfair act by Defendant constitutes a separate and distinct violation of G.L. c. 93A, § 2.

35. The Commonwealth's claim is timely.

36. The Attorney General notified Defendant of her intention to file this suit, in conformance with G.L. c. 93A, § 4.

**SECOND CAUSE OF ACTION  
(Common Law Public Nuisance)**

37. The Commonwealth realleges each allegation above.

38. Under Massachusetts common law, a defendant is liable for the tort of public nuisance when its conduct causes an unreasonable interference with a right common to the general public, such as interference with the public health, public safety, public peace, and public comfort and convenience.

39. The Attorney General is empowered to bring a *parens patriae* action on behalf of the Commonwealth for abatement of a public nuisance.

40. Defendant was a substantial participant in creating and maintaining a public nuisance of addiction, illness, and death that significantly interferes with the public health, safety, peace, comfort, and convenience of Massachusetts residents.

41. Defendant, in the course of dispensing opioid-containing prescription drugs, created a public nuisance by unreasonably interfering with rights common to the general public as prohibited by the common law of the Commonwealth. Defendant's acts and practices that unreasonably interfered with rights common to the general public include, but are not limited to, the following:

- a. Failing to provide effective controls and procedures to guard against diversion of opioids in the Commonwealth; and
- b. Failing to practice its corresponding responsibility and dispensing opioids in the Commonwealth despite not resolving red flags indicating that prescriptions may be for illegitimate purposes.



42. The injuries that Defendant caused in Massachusetts have been significant and long-lasting, for both the Commonwealth and the public, including: (a) opioid addiction, overdose, and death; (b) health care costs for individuals, children, families, employers, the Commonwealth, and its subdivisions; (c) loss of productivity and harm to the economy of the Commonwealth; and (d) special public costs borne solely by the Commonwealth in its efforts to abate the nuisance and to support the public health, safety, and welfare.

43. The Commonwealth has spent at least hundreds of millions of dollars on special treatment, prevention, intervention, and recovery initiatives to abate the harms of the opioid epidemic.

44. The Commonwealth has a special relationship with, and responsibility to its residents, including its responsibility to uphold the public health, safety, and welfare. Defendant had reason to know of this relationship at all times.

45. Defendant's unfair conduct was unreasonable.

46. The Commonwealth's claim is timely.

#### **REQUEST FOR RELIEF**

47. The Commonwealth respectfully requests that the Court enter an Order:

- a. Issuing a permanent injunction prohibiting Defendant, Defendant's officers, agents, servants, employees, attorneys—and any other person in active concert or participation with Defendant—from engaging in unfair or deceptive acts and practices in violation of G.L. c. 93A, § 2;
- b. Ordering Defendant to pay compensatory restitution and remediation as set forth in G.L. c. 93A, § 4;

- c. Ordering Defendant to abate the public nuisance by paying compensatory restitution and remediation;
- d. Ordering Defendant to pay Plaintiff's attorneys' fees and costs of court pursuant to G.L. c. 93A, § 4 ; and
- e. Ordering any further relief the Court deems just and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
By its Attorney  
Andrea Joy Campbell  
ATTORNEY GENERAL

Gregory  
Hardy

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