

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT  
C.A. No. 2284CV01041

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COMMONWEALTH OF MASSACHUSETTS,	)
	)
Plaintiff	)
	)
v.	)
	)
JOHNSON & JOHNSON;	)
JANSSEN PHARMACEUTICALS, INC.;	)
ORTHO-MCNEIL-JANSSEN	)
PHARMACEUTICALS, INC.;	)
and JANSSEN PHARMACEUTICA, INC.,	)
	)
Defendants.	)
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**COMPLAINT**

Plaintiff, the Commonwealth of Massachusetts, brings this action against Defendants Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, “Janssen”) 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 Defendants 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 Maura Healey, who brings this action in the public interest pursuant to G.L. c. 12 and 93A.

5. Defendant Johnson & Johnson is a New Jersey company with a principal place of business in New Brunswick, NJ. Johnson & Johnson is one of the largest drug companies in the world. Johnson & Johnson reported nearly \$94 billion in annual revenue and was ranked as the 36<sup>th</sup> largest company in the United States.<sup>1</sup>

6. Defendant Janssen Pharmaceuticals, Inc. is a Pennsylvania company with a principal place of business in Titusville, NJ.

7. Defendant Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals is Pennsylvania company with a principal place of business in Titusville, NJ.

8. Defendant Janssen Pharmaceutica, Inc., n/k/a Janssen Pharmaceuticals is a Pennsylvania company with a principal place of business in Titusville, NJ.

9. Each of the Defendants conducts business in the Commonwealth of Massachusetts. Each of the Defendants engaged in the misconduct described herein.

## III. FACTUAL ALLEGATIONS

### A. Janssen Deceived Massachusetts Doctors and Patients To Get More People On It Opioids.

10. Beginning in the mid-1990s, opioid manufacturers including Janssen pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions in Massachusetts. The rise in opioid prescriptions caused an

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<sup>1</sup> Fortune 500, available at <https://fortune.com/company/johnson-johnson/fortune500/>.

equally devastating rise in opioid use disorder, dependence, addiction, and overdose deaths. Of the 18,061 people confirmed to have died of opioid-related overdoses in Massachusetts since 2009, 12,372 filled prescriptions for Schedule II opioids dispensed by a Massachusetts pharmacy: more than 68%. Many of those patients filled prescriptions for hundreds, or thousands, of pills.

24. Prescription opioids continue to kill hundreds of people across Massachusetts every year. 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 Massachusetts suffers from the opioid crisis of addiction and death.

25. Janssen manufactured, marketed, and sold five branded opioid products nationwide and in Massachusetts: Duragesic, Nucynta, Nucynta ER, Ultram, Ultram ER and Ultracet. In addition to selling and marketing opioids, Janssen was a leading supplier of the raw ingredients of opioid products in the United States from the 1980s up until 2016.

26. In promoting its opioid products, Janssen deceived doctors and the public about the serious risks of addiction, overdose and death. Janssen falsely claimed its opioids: were less addictive than other opioids; had a low risk of withdrawal; improved patient function and quality of life; were particularly effective and well-tolerated by elderly patients; and that they presented less adverse side effects than non-addictive alternatives like Tylenol and ibuprofen. Janssen also misrepresented that its crush-resistant Nucynta ER tablets could curb addiction and abuse. In addition to misrepresenting the risks of opioids, Janssen misled prescribers about the efficacy of patient screening tools like patient contracts and urine drug screens for preventing addiction.

27. Janssen propagated falsehoods about its opioids in multiple ways, including through sales representatives who visited Massachusetts doctors, by paying prolific opioid

prescribers to influence other doctors to prescribe more opioids, by funding and disseminating publications that mischaracterized the risks and benefits of opioids, by paying for deceptive propaganda by groups designed to appear independent from Janssen, and on the unbranded websites it maintained, including [www.PrescribeResponsibly.com](http://www.PrescribeResponsibly.com).

**B. Janssen Sales Reps Visited Massachusetts Prescribers More Than 59,000 Times to Push Its Nucynta Opioid, With Deadly Effects.**

28. Janssen pushed Massachusetts doctors to prescribe more and more opioids, because high-prescribing doctors earned Janssen millions of dollars. To make sure doctors prescribed more opioids, Janssen tracked Massachusetts doctors' prescriptions, visited their offices, gave them copay coupons, and asked them to put specific patients on Janssen drugs.

29. Janssen representatives visited Massachusetts prescribers to push its Nucynta opioid more than 59,000 times, between June 2009 and May 2013. These visits were profitable for Janssen, but deadly for Massachusetts patients.

30. A Somerset doctor Janssen visited at least 120 times wrote Nucynta prescriptions for at least 12 patients who overdosed and died. A West Bridgewater doctor Janssen visited at least 77 times prescribed wrote Nucynta prescriptions for 5 patients who overdosed and died. A Worcester doctor Janssen visited at least 55 times wrote Nucynta prescriptions for at least 4 patients who overdosed and died. A Carver doctor Janssen visited at least 77 times wrote Nucynta prescriptions for at least 3 patients who overdosed and died. A Fall River doctor Janssen visited at least 145 times wrote 58 Nucynta prescriptions for a patient who overdosed and died.<sup>2</sup>

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<sup>2</sup> Additional information about the Attorney General Office's investigation of death and prescription records is found in the Appendix to the complaint in *Commonwealth v. Cardinal Health, et al.*, C.A. No. 22-0926B (Apr. 28, 2022), available at <https://www.mass.gov/doc/massachusetts-distributor-complaint-with-appendix/download>.

31. Janssen sales reps also targeted other prescribers whose practices and prescribing behaviors bore serious red flags, like Dr. Fernando Jayma, in Ludlow, Dr. Yoon Choi, in Brockton, Dr. Fathalla Mashali, who ran pain clinics in Holbrook, Weymouth, Winchester, Worcester, and Rhode Island and Dr. Ellen Malsky, in Stoneham. Janssen sales reps visited: Jayma 83 times between January 2010 and May 2013; Choi 72 times between July 2009 and December 2012; Mashali 64 times between February 2010 and May 2013; and Malsky 45 times between June 2009 and December 2010.

32. Purdue sales reps who were visiting these doctors during the same time period identified numerous red flags. Janssen sales reps would have had occasion to observe the same red flags. For example, in June 2010, Jayma told a Purdue sales rep pushing OxyContin that many of his patients had failed drug screens and doctor shopped. In August 2011, Jayma told Purdue that he wrote six months' worth of prescriptions at a time and patients just came in and picked them up. In October 2011, Jayma told Purdue that an insurer was denying his OxyContin prescriptions. In May 2013, Purdue's rep reported that Jayma was seeing a lot of patients from a doctor who had been arrested for improper prescribing and had his license seized.

33. Later in 2013, a sales rep described the scene at Jayma's office:

Upon entering office it did not appear to be the typical internal med/general medicine practice. All patients appeared to be there for pain management and no other health concerns ... While in the office the police had arrived because there had been 2 prescription pads stolen by a girlfriend of a patient. She tried to fill rx at local Stop and Shop and was turned down. [The medical assistant] further stated that they do see out of state patients and do not take drivers licenses and insurance card at time of check in. She stated that Rite Aid pharmacy as a corporation will not fill any of dr.'s Rx's. Many other local pharmacies require additional information.

In 2017, Jayma was convicted of illegally prescribing controlled substances and was sentenced to two-and-a-half years in the house of correction.

34. Likewise, in 2012 and 2014, Purdue salespeople reported concerns about Choi's prescribing behavior. In 2017, the Massachusetts Board of Registration in Medicine suspended Choi's license after concluding he had committed negligence on multiple occasions, including in connection with two patients – a mother and son – who both overdosed on opioids and died.

35. The red flags regarding Mashali's practice were also abundant. In January 2012, a Purdue sales rep reported hearing that the DEA was investigating Mashali's office in Rhode Island. More than a year after that, in June 2013, the sales rep noted that she visited Mashali's office to follow up on a "rumor I heard about him losing his license." In an email, her manager worried about the bottom line: "Dr. Mashali is the largest prescriber of OxyContin in the District and most likely the Region." He was cutting back on OxyContin "because of so much scrutiny he's under."

36. The sales rep wrote:

on several occasions recently when calling on his office patients are literally lined out the door. I have spoken with this staff and some of these patients are waiting up to 4-5 hours before being seen by Dr Mashali. In addition, approximately 3 months ago he is no longer taking [Blue Cross Blue Shield] of MA. Dr Mashali claims it is because BCBS of MA, I could never get a straight answer. I suspect it could be for other reasons.... BCBS is not comfortable with the way he is practicing and trying to get reimbursement. Dr Mashali did state for many office visits he is now making patients pay cash for their office visits ... Based on my observations and gut feeling including comments from other pain physicians in the area, lately there appears to be too many red flags with Dr Mashali.

In 2013, the Rhode Island Board of Medicine revoked Mashali's license, finding that he was "an immediate threat to the health, welfare and safety of the public."<sup>3</sup> Mashali was later convicted of 27 counts of health care fraud and sentenced to eight years in prison.<sup>4</sup>

37. With respect to Dr. Malsky, red flags were apparent at least as early as March 2006, when Purdue's sales rep recorded a note that Malsky "has issues with legal use of prescribing," and again, in May 2007, when Malsky raised concerns about attracting too much attention to her prescribing.

38. In December 2009, Purdue's sales rep noted that a patient of Malsky died from an overdose. Three months later, the Purdue representative recorded that Malsky "lost her affiliation with BCBS - however, 75% of those patients switched to other plans in order to stay in her practice; BCBS said she was writing too many opioids as an Internal Medicine doctor[.]"

39. On September 29, 2010, Malsky told Purdue's sales rep she planned to close her practice "because of pressure from the MA board to write less opioids." Malsky surrendered her medical license in April 2011.

40. Like Purdue, Janssen ignored obvious red flags and put its own profits ahead of the safety and welfare of Massachusetts patients.

### **C. Misconduct By Janssen and The Opioid Industry Fueled A Public Health Crisis Of Addiction, Overdose And Death.**

41. From 2009 through the most recent data in September 2021, state records show that more than eighteen thousand Massachusetts residents died of opioid-related overdoses. Of

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<sup>3</sup> Summary Suspension of Physician License (Aug. 29, 2013), available at <https://health.ri.gov/discipline/MDFathallaMashali.pdf>.

<sup>4</sup> Press Release, U.S. Dep't of Justice, *Pain Management Physician Pleads Guilty to Health Care Fraud and Money Laundering* (Mar. 15, 2017), available at <https://www.justice.gov/usao-ma/pr/pain-management-physician-pleads-guilty-health-care-fraud-and-money-laundering>.

the 18,061 people confirmed to have died of opioid-related overdoses since 2009, 12,372 filled prescriptions for Schedule II opioids dispensed by a Massachusetts pharmacy: more than 68%.

Many of those patients filled prescriptions for hundreds, or thousands, of pills.

42. Janssen supplied opioids to 110 people in Massachusetts who overdosed and died.

43. Janssen's misconduct has imposed lasting hardship on the people who lost their loved ones. Because of the Distributors' misconduct, too many children in Massachusetts have lost their parents to an overdose. Too many parents in Massachusetts have buried their children. Too many grandparents in Massachusetts are raising their grandchildren.

44. Fatal overdoses are only part of the devastation that Janssen and the opioid industry imposed. Purdue Pharma staff reported to the Sacklers that deaths were only the "tip of the iceberg." The government data presented to Purdue's board indicated that, for each overdose death, there were more than a hundred people suffering from prescription opioid dependence or abuse. Patients who survive opioid use disorder need lengthy, difficult, and expensive treatment. People affected by substance use disorder are sometimes unable to work. The addiction of parents can force their children into foster care.

45. The cost of the opioid crisis to the people of Massachusetts and on the Commonwealth massive. Intensive care for a newborn who has been harmed by opioids can cost \$200,000, before the baby even comes home from the hospital. The injuries from opioid use disorder and overdose are staggering. For example, the White House Council of Economic Advisers determined that a middle estimate of the cost of each death from opioid overdose is \$9.6 million.



46. In 2014, the Governor of Massachusetts declared the opioid crisis a public health emergency. The Governor stated: “We have an epidemic of opiate abuse in Massachusetts, so we will treat it like the public health crisis it is.”<sup>5</sup>

#### IV. CAUSES OF ACTION

***Count One***  
***Unfair and Deceptive Acts and Practices***  
***In Violation of G.L. c. 93A, § 2***

47. The Commonwealth realleges each allegation above.

48. 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 violates G.L. c. 93A, § 2.

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

50. At all times relevant to this Complaint, Defendants violated G.L. c. 93A, § 2 by engaging in unfair and deceptive acts and practices in connection with its marketing and sales of its opioid drugs.

51. The Defendants’ unfair and deceptive acts and practices resulted in substantial injury to Massachusetts consumers.

52. The Defendants’ misconduct was knowing and willful.

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<sup>5</sup> Marc Larocque, *Gov. Patrick declares public health emergency in wake of heroin epidemic*, Patriot Ledger (Mar. 27, 2014), <https://www.patriotledger.com/article/20140327/NEWS/140326456>; Richard Valdmanis, *Massachusetts declares heroin emergency, looks to anti-overdose drug*, Reuters (Mar. 27, 2014), <https://www.reuters.com/article/usa-heroin-massachusetts-idINL5N0MO5BE20140327>; Bradley J. Fikes, *Zohydro banned in Massachusetts*, Chicago Tribune (Mar. 28, 2014), <https://www.chicagotribune.com/sdut-zohydro-ban-mass-zogenix-deval-2014mar28-story.html>.

53. Each unfair act by each Defendant constitutes a separate and distinct violation of G.L. c. 93A.

54. The Commonwealth's claim is timely.

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

***Count Two***  
***Public Nuisance***

56. The Commonwealth realleges each allegation above.

57. Under Massachusetts common law, a defendant is liable for the tort of public nuisance when their 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.

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

59. Each 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.

60. The injuries that the Defendants 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.

61. 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.

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

63. Each Defendant, at all times, had reason to know of the public nuisance created by their ongoing conduct.

64. The Defendants' unfair conduct was unreasonable.

65. The Commonwealth's claim is timely.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, the Commonwealth respectfully requests that this Court enter an Order:

- a. Issuing a permanent injunction prohibiting Defendants, Defendants' officers, agents, servants, employees, attorneys – and any other person in active concert or participation with any or all Defendants – from engaging in unfair or deceptive acts and practices in violation of G.L. c. 93A, § 2;
- b. Ordering Defendants to pay compensatory restitution, pursuant to G.L. c. 93A, § 4;
- c. Ordering Defendants to abate the public nuisance by paying compensatory restitution;
- d. Ordering Defendants to pay the Commonwealth's attorneys' fees and costs, 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  
MAURA HEALEY  
ATTORNEY GENERAL



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