

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ASSOCIATION FOR ACCESSIBLE
MEDICINES,

Plaintiff

v.

Case No. 23-CV-2024

KEITH ELLISON
in his official capacity as
Attorney General
of the State of Minnesota,

**DECLARATION OF
RANDALL ARMBRUSTER**

Defendant

I, RANDALL ARMBRUSTER state as follows:

1. I am a licensed pharmacist and small business owner. After I graduated from college in 1979, I worked for several drug stores and pharmacies before purchasing my own, Randy's Family Drug, in Sleepy Eye, Minnesota in 1987. I have run the store ever since, though I am now semi-retired with fewer responsibilities in the business.
2. Randy's Family Drug is a retail pharmacy, or what most people think of when you say the word "pharmacy." We sell over-the-counter and prescription drugs, in addition to various everyday retail items people in our community might need. In addition to that retail work, we directly service two nearby nursing homes.
3. The pharmacy industry has changed drastically since I began working. For example, as the healthcare industry has evolved, there has been a steady shift from cash-paying customers to those covered by insurance. More recently, pharmacy benefits managers ("PBMs") began acting as intermediaries between insurers and retail pharmacies like mine. The shift from paper to electronic inventory, prescriptions, and billing has accentuated these changes and allowed for sophisticated management of the industry.
4. Randy's Family Drug stocks and sells both brand-name and generic drugs. For generic drugs, we purchase from whatever distributor or wholesaler has the best price at the time we purchase the drug. That wholesaler could be the manufacturer itself, depending on the drug, it could be a local wholesaler physically located in Minnesota, or it could be a larger wholesaler located in another state.
5. When we purchase a drug, we enter the cost into our system and add a markup to that cost so that we can profit from the transaction when a customer purchases it. That cost plus markup is what would show at the cash register for a customer paying cash for their prescription. For generic drugs, that markup is generally based on a percentage of our cost plus a dispensing fee.

6. How we are paid for the drug differs based on the payor. For cash-paying customers, the transaction is straightforward: The price is what is on the register. But for customers with insurance, the cost to the consumer, and the money received by the pharmacy, is more complicated.
7. Randy's Family Drug contracts with PBMs and attempts to negotiate the best reimbursement we can get for our third-party-covered prescription sales. Those negotiations include contracts that address, among other things, how PBMs will determine the amount to pay us, on behalf of their client insurer, for dispensing drugs.
8. For many generic drugs in wide marketplaces with numerous competitors, insurers and PBMs have often established a "maximum allowable cost," or "MAC" that restricts the total amount a pharmacy will obtain from a transaction of that generic drug. But, for drugs with few alternatives, or more expensive generic medications, PBMs' contracts with us specify that the pharmacy will receive money based on the wholesale acquisition cost ("WAC") or average wholesale price ("AWP") of the drug.
9. Drug manufacturers set the list price of their drug and publish those prices in national trade catalogs like Red Book, Bluebook, or Medispan. In almost all cases, AWP of a drug is WAC + 20%.
10. When the pharmacy sells a generic drug to a consumer with commercial insurance using a PBM that has contracted a WAC- or AWP-based price for the generic drug with the pharmacy, the pharmacy's claim for reimbursement is reviewed by the PBM, which in turn queries the trade catalog for an up-to-the-minute WAC of the drug in question. Once the PBM has used the catalog and the manufacturer's list price to set the baseline price of the drug, it applies the negotiated reimbursement discount in the PBM's contract with the pharmacy and remits the funds.
11. Accordingly, the price that an insurer pays to my pharmacy, through its PBM contract, is often directly related to the WAC or list price set by a manufacturer. For generic drugs, that price set by the manufacturer can be set arbitrarily high and increased as frequently as the manufacturer desires.
12. Many patients with commercial insurance have pharmaceutical copays that are a percentage of the cost of a dispensed drug, up to some deductible cap. Often, those copays are based on the WAC or AWP of the drug. For example, if a consumer's insurance plan requires a 20% copay of the pharmacy reimbursement formula, the consumer would be required to pay a co-pay directly based on the manufacturer's advertised list price for drugs where reimbursement to the pharmacy is based on WAC or list price. The consumer's co-pay is then at the mercy of the manufacturers' pricing decision.
13. Consumers with insurance plans that require copays based on the WAC or AWP of the drug, or even on the amount paid to the pharmacy through a PBM, when that amount is

based on the WAC or AWP of the drug, are directly exposed to manufacturers' published prices at the point of purchase.

14. Price spikes can occur from perverse incentives in the marketplace. For example, as Lantus's patent expired, Mylan introduced a generic glargine insulin, Semglee at a \$177.45 AWP, compared to Lantus's over-\$600 price. Mylan was not having success at getting onto PBMs' formularies, so Semglee advertised itself as an affordable cash-paying option for diabetic patients. Eventually, Mylan was able to negotiate Semglee onto formularies for PBMs in order to increase sales and allow patients to maximize their insurance, but in doing so, Semglee's price skyrocketed by over \$250. The drug was effectively the same, with the only difference being that Semglee was available through PBM formularies.

I DECLARE UNDER PENALTY OF PERJURY THAT EVERYTHING I HAVE STATED IN THIS DOCUMENT IS TRUE AND CORRECT.


RANDALL ARMBRUSTER

Dated: 7/26/2023
County of Brown, State of Minnesota