

ELLEN F. ROSENBLUM
Attorney General
SHAUNEE MORGAN # 194256
Assistant Attorney General
CARLA A. SCOTT #054725
Senior Assistant Attorney General
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Shaunee.Morgan@doj.state.or.us
Carla.A.Scott@doj.state.or.us

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

PHARMACEUTICAL RESEARCH AND
MANUFACTURERS OF AMERICA,

Plaintiff,

v.

ANDREW STOLFI, in his official capacity as
Director of the Oregon Department of
Consumer and Business Services,

Defendant.

Case No. 6:19-cv-01996-AA

DECLARATION OF CASSANDRA SOUCY
IN SUPPORT OF DEFENDANT'S
COMBINED MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

I, Cassandra Soucy, hereby declare:

1. I am the Drug Pricing Transparency Program Coordinator at Oregon Department of Consumer and Business Services (DCBS).

2. In 2018, the Oregon legislature enacted a law providing for drug-pricing transparency. House Bill 4005, 2018 Or. L. Ch. 7, codified at ORS 646A.680 – 646A.692 (H.B. 4005).

3. My job duties include implementing H.B. 4005. H.B. 4005 requires pharmaceutical manufacturers to report information regarding specific new prescription drugs and certain historical information in annual reports relating to pricing for existing drugs to DCBS (e.g., the length of time the drug has been on the market; the name of generic versions of the prescription drugs available on the market; historical pricing). DCBS is, in turn, required to post that information on its website unless (1) the information is a trade secret and (2) the public interest does not require disclosure.

4. To date, 1,112 reports have been filed under H.B. 4005.

5. DCBS has posted, via its website, data elements from those reports that were not claimed as trade secret. *See* <https://dfr.oregon.gov/drugtransparency/data/Pages/index.aspx>. To date, DCBS has not disclosed any information a drug manufacturer has claimed as a trade secret. Manufacturers have asserted 4,865 trade secret claims in reports submitted to DCBS.

6. Review of these claims is ongoing as reports are made and DCBS is beginning to make initial determinations on trade secret claims. The trade secret determination process provides an opportunity for the manufacturer to appeal DCBS' determination before a final determination is made. Manufacturers are also provided 21-days' notice before any information claimed to be trade secret is publicly posted.

7. In conducting its review of information claimed as trade secrets, DCBS has observed that much of the information claimed as trade secret by the manufacturers has in fact been published by those manufacturers elsewhere in press releases, U.S. Securities and Exchange Commission (SEC) filings, or otherwise, and are therefore not trade secrets.

8. For example, one manufacturer submitted lengthy narrative descriptions for its marketing and pricing methodology of a new drug report and claimed that this information was trade secrets. DCBS staff subsequently found all the information on publicly available websites such as the manufacturer's own website, press releases from the manufacturer, SEC 10K filings, and clinical trial information submitted to the FDA.

9. Another manufacturer claimed the price of the drug in other countries was a trade secret. DCBS requested additional information asking for more information on why this was a trade secret when most companies did not claim prices in other countries as a trade secret. The manufacturer then withdrew its trade secret claim.

10. Similarly, one manufacturer claimed its entire filing as a trade secret. DCBS communicated with the manufacturer that the trade name, generic name, and wholesale acquisition cost of the drug reported were not trade secrets since this information was available on the manufacturer's website. The manufacturer agreed that this information was not a trade secret.

11. Further, some manufacturers have rescinded their trade secret claims after seeing that similar information submitted by other manufacturers had been publicly displayed on DCBS' website.

12. If DCBS determines that particular information is rightly claimed as a trade secret, DCBS will not publicize that information unless the public interest requires it. This will be decided on a case-by-case basis. It is possible that none of the information a PhRMA member has submitted to DCBS contains trade secrets. It is also possible that, even if a PhRMA member has provided trade secrets to DCBS, disclosure to the public may not be required by the public interest.

13. In addition to the explicit data requested under H.B. 4005, drug manufacturers are also allowed to submit any additional information they deem relevant to the price increase

covered by the law and many have done so. Some have provided clarification about the breakdown of their direct costs associated with manufacturing, marketing, or distributing the prescription drug. Others have used the opportunity to clarify that various information related to the price increase was not available to them because the drug was acquired from another manufacturer.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 26, 2020.

s/ Cassandra Soucy
CASSANDRA SOUCY