



## Fact Sheet: Walmart Lawsuit Against DOJ and DEA

Walmart filed a lawsuit in federal court against the Department of Justice (DOJ) and the Drug Enforcement Administration (DEA) to clarify the roles and legal responsibilities of pharmacists and pharmacies under the Controlled Substances Act (CSA) when they fill opioid prescriptions. This fact sheet summarizes some of the important components of Walmart's lawsuit and points to numbered paragraphs in the complaint where more detail can be found.

### Basic Summary

#### **Walmart Is Committed to Helping Solve the Opioid Crisis and Assisting Law Enforcement**

1. Walmart pharmacists have exercised their professional judgment to refuse to fill hundreds of thousands of problematic opioid prescriptions, and Walmart has blocked thousands of questionable doctors from having their opioid prescriptions filled at any of our pharmacies.
2. Walmart often assists law enforcement to identify problematic prescriptions and prescribers and helps bring bad doctors to justice.

#### **DOJ and DEA's Misguided Legal Theories Are Not Supported by the CSA or Its Regulations**

3. Under the CSA, the role of pharmacists and pharmacies in dispensing opioids is important but limited.
4. Through threatened litigation against Walmart, DOJ and DEA are trying to shift onto pharmacists and pharmacies DEA's statutory obligation to prevent problematic doctors from prescribing opioids, even though DEA itself still approves many of those doctors to prescribe opioids.
5. After the fact, DOJ and DEA are trying to require pharmacists and pharmacies to refuse to fill entire categories of prescriptions, obligations that are not found in any law.
6. DOJ and DEA are trying to enforce "requirements" that they could have promulgated before, but never did. Instead, their legal theories are found only in informal "guidance"—including PowerPoint presentations—that DOJ itself says is not binding law.

#### **DOJ and DEA Have Placed Pharmacists and Pharmacies Between a Rock and a Hard Place, Where They Are Sued Whether They Fill or Refuse to Fill Opioid Prescriptions**

7. DOJ's and DEA's new legal theories force pharmacists and pharmacies to intervene in the doctor-patient relationship in a way that state regulators say is illegal under many state laws.
8. Pharmacists and pharmacies often face private lawsuits by doctors and patients for refusing to fill opioid prescriptions.
9. DOJ's and DEA's new legal theories often conflict with the expert medical judgments of other federal health agencies.

#### **Some DOJ Officials Seem More Focused on Chasing Headlines than Fixing the Crisis**

10. DOJ spent years on an ethically tainted investigation and even threatened to "embarrass" Walmart with a criminal indictment in order to pressure the company into a civil settlement.

## Detailed Summary

### **Walmart Is Committed to Helping Solve the Opioid Crisis and Assisting Law Enforcement**

**1. Walmart pharmacists have exercised their professional judgment to refuse to fill hundreds of thousands of problematic opioid prescriptions, and Walmart has blocked thousands of questionable doctors from having their opioid prescriptions filled at any of our pharmacies.**

- Walmart provides its pharmacists with the training and information to make informed decisions about opioid prescriptions. ¶ 78.
- Walmart pharmacists have refused to fill hundreds of thousands of problematic opioid prescriptions, ¶ 16, and Walmart pharmacists can refuse to fill all controlled-substance prescriptions from doctors about whom they have concerns. ¶ 80.
- Supported by a team of data analysts and investigators, Walmart has centrally blocked thousands of doctors from having their prescriptions filled at any Walmart pharmacy since it implemented its corporate block policy. ¶¶ 80, 105.
- The complaint does not discuss all of Walmart's efforts to help solve the opioid crisis, but more details can be found at <http://corporate.walmart.com/opioids>.

**2. Walmart often assists law enforcement to identify problematic prescriptions and prescribers and helps bring bad doctors to justice.**

- Walmart has provided in-depth assistance to law enforcement, using its cutting-edge analytics and investigative teams to identify problematic doctors, which has helped law enforcement to secure search warrants, and provided evidence leading juries to convict bad doctors. ¶¶ 81–82.

### **DOJ and DEA's Misguided Legal Theories Are Not Supported by the CSA or Its Regulations**

**3. Under the CSA the role of pharmacists and pharmacies in dispensing opioids is important but limited.**

- Unlike federal agencies and state medical boards, pharmacists and pharmacies have no say in approving opioids as safe and effective, ¶ 21, and can only dispense prescriptions written by state-licensed and DEA-registered doctors. ¶ 42.
- Pharmacists must refuse to fill prescriptions they know to be forged, altered, or not written for a legitimate medical need. ¶ 4. However, they cannot interfere with the doctor-patient relationship by usurping the doctor's treatment decision. ¶ 7
- Doctors, not pharmacists and pharmacies, have the primary responsibility for ensuring opioids are properly prescribed. ¶ 44. Pharmacists are not doctors, do not examine or diagnose patients for purposes of dispensing opioid medication, and do not have access to patients' medical records. ¶ 7.

**4. Through threatened litigation against Walmart, DOJ and DEA are trying to shift onto pharmacists and pharmacies DEA's statutory obligation to prevent problematic doctors from prescribing opioids, even though DEA itself still approves many of those doctors to prescribe opioids.**

- The CSA gives DEA—not pharmacists and pharmacies—the legal duty to investigate doctors and revoke their registrations if they violate their professional obligations. Preamble; ¶ 3.

- But DOJ and DEA appear poised to claim that pharmacists and pharmacies have an obligation to block all prescriptions from certain doctors. ¶ 142. DOJ and DEA cannot point to any law that includes this requirement. ¶ 143. And, DEA has publicly warned, in response to reports of large chains increasingly refusing to fill certain prescriptions, that “legitimate patients” might be unable to “get their prescription for pain medications.” ¶ 116.
- Government watchdogs, including DOJ’s Inspector General, have criticized DEA for granting problematic doctors registrations to prescribe opioids and then also failing to revoke those registrations. ¶¶ 5, 99–106.
- DOJ and DEA are even saying pharmacists and pharmacies must refuse to fill all prescriptions from doctors that DEA itself continues to permit to prescribe opioids. In fact, nearly 70% of the doctors DOJ identified as having written problematic prescriptions that should not have been filled still have active DEA registrations to this day. ¶ 117.

**5. After the fact, DOJ and DEA are trying to require pharmacists and pharmacies to refuse to fill entire categories of prescriptions, obligations that are not found in any law.**

- DOJ and DEA’s legal position would treat entire categories of prescriptions as illegal. ¶¶ 121–136.
- Publicly, DEA says the agency cannot take a categorical approach to prescriptions—as recently as 2019. ¶ 63.

**6. DOJ and DEA are trying to enforce “requirements” that they could have promulgated before, but never did. Instead, their legal theories are found only in informal “guidance”—including PowerPoint presentations—that DOJ itself says is not binding law.**

- DOJ and DEA pieced together their legal theories from scattered letters, PowerPoint presentations, and other materials that are, at best, informal “guidance”—rather than from the CSA and its regulations. ¶ 12.
- Under its own rules, DOJ cannot use guidance like this as the basis for enforcement actions. ¶¶ 12, 150.
- DOJ and DEA never promulgated regulations telling pharmacies and pharmacists how to evaluate opioid prescriptions, and they cannot impose such new requirements after the fact. ¶¶ 12, 150.

**DOJ and DEA Have Placed Pharmacists and Pharmacies Between a Rock and a Hard Place, Where They Are Sued Whether They Fill or Refuse to Fill Opioid Prescriptions**

**7. DOJ’s and DEA’s new legal theories force pharmacists and pharmacies to intervene in the doctor-patient relationship in a way that state regulators say is illegal under many state laws.**

- In an atmosphere of government pressure, including DOJ’s unethical threats of criminal sanctions meant to force the company into a huge civil settlement, Walmart accelerated the implementation of doctor-blocking policies. ¶ 17.
- Numerous Boards of Pharmacy—including Alaska, Arkansas, Colorado, Idaho, Kansas, Maryland, Missouri, New Hampshire, Ohio, Oregon, Pennsylvania, Tennessee, West Virginia, and Wisconsin—have received or pursued complaints against the company and its pharmacists for refusing to fill opioid prescriptions. ¶ 90.

- Example: The Tennessee Board of Pharmacy investigated Walmart for centrally blocking opioid prescriptions, and interfering with the professional judgment of pharmacists. ¶ 87.
- Example: The Idaho Board of Pharmacy contended that it is improper to refuse to fill all prescriptions from a particular doctor, even if the doctor has been criminally indicted. ¶ 52.
- Example: The Wisconsin Board of Pharmacy issued an Administrative Warning to a Walmart pharmacy for blocking doctors at a specific clinic from having their controlled substance prescriptions filled. ¶ 88.
- Some medical associations and medical boards have also threatened Walmart.
  - Example: The President of the Texas Medical Board threatened to issue “cease and desist” orders to pharmacists who “override” doctors’ judgments. The Texas Medical Board then claimed pharmacists should be limited to identifying whether a prescription is forged or fraudulent rather than inquiring into the medical legitimacy of a prescription written by an accredited doctor. ¶ 89.
  - Example: The American Medical Association has criticized Walmart blanket refusal-to-fill and corporate refusal-to-fill policies as “interfering in the practice of medicine.” ¶ 84

## **8. Pharmacists and pharmacies often face private lawsuits by doctors and patients for refusing to fill opioid prescriptions.**

- Doctors have sued pharmacists and pharmacies for defamation after refusals to fill their prescriptions, claiming this action implies that the doctor has engaged in professional malfeasance. ¶ 53.
- Patients themselves have sued pharmacists and pharmacies, both in individual suits and in class action lawsuits, for refusing to fill prescriptions that appear valid on their face. ¶ 54.

## **9. DOJ and DEA’s new legal theories often conflict with the expert medical judgments of federal health agencies.**

- Example: DOJ and DEA claim that pharmacists and pharmacies have a duty to block all prescriptions from certain doctors. ¶ 142. But HHS warns that such categorical rules can be a “barrier” that may “limit access to optimal pain care,” ¶ 75, and FDA warns against abruptly discontinuing opioid medications in dependent patients. ¶ 49.
- Example: In litigation, DOJ and DEA have claimed that some opioid prescription combinations are categorically illegal because there is never a medical basis for them. ¶ 60. But medical experts at CMS and other agencies still advise that prescriptions should be evaluated on a case-by-case basis, ¶ 13, and CMS covers these combinations in some cases. ¶ 62.

## **Some DOJ Officials Seem More Focused on Chasing Headlines than Fixing the Crisis**

### **10. DOJ spent years on an ethically tainted investigation and even threatened to “embarrass” Walmart with a criminal indictment in order to pressure the company into a civil settlement.**

- DOJ spent years on an investigation of Walmart that was tainted by ethical transgressions and even threatened to “embarrass” Walmart with a criminal indictment in order to pressure the company into a civil settlement. ¶ ¶ 108–114.



- Some DOJ officials followed through on their unethical threats to try to “embarrass” Walmart by leaking confidential information and publicly confirming the investigation. ¶¶ 114.
- Some DOJ lawyers also threatened a flood of DOJ lawsuits around the country if Walmart did not pay. Those lawyers followed through by creating a “Working Group” of DOJ lawyers from around the country to continue investigating Walmart after Walmart did not settle and DOJ leadership recognized that the criminal case lacked merit and declined to prosecute the company. ¶¶ 113.