

# Case Law Monitor

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Each issue of *Case Law Monitor* highlights unique cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the *Case Law Monitor* helpful, and please feel free to provide feedback at [info@thelappa.org](mailto:info@thelappa.org).

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## U.S. SUPREME COURT DECLINES TO REVIEW DECISION REQUIRING COMPLIANCE WITH DEA SUBPOENA FOR PDMP RECORDS

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***Program Admin. of New Hampshire Controlled Drug Presc. Health & Safety Program v. U.S. Dept. of Justice*, U.S. Supreme Court, Case No. 22-43 (writ of certiorari denied October 3, 2022).** In June 2018, the Drug Enforcement Administration (DEA) issued an administrative subpoena against Michelle Ricco Jonas, Program Manager of the New Hampshire Prescription Drug Monitoring Program (PDMP), seeking PDMP records pertaining to an individual subject to DEA investigation. Ricco Jonas refused to comply, contending that the subpoena's true target was not her personally, but the state of New Hampshire, which is not a "person" under the federal Controlled Substances Act (CSA). The initial refusal to comply instructed the DEA to follow New Hampshire state law and obtain a court order based on probable cause to obtain the PDMP records. In August 2018, the U.S. Department of Justice (DOJ) filed a petition in New Hampshire federal court to enforce the subpoena. Before the court, DOJ argued that the subpoena was directed at Ricco Jonas personally; however, even if it were targeted at New Hampshire, the CSA authorizes subpoenas against states and preempts state law. In addition to the arguments asserted in the initial refusal to comply, Ricco Jonas further asserted that individuals have a reasonable expectation of privacy in their prescription drug records that is protected by the Fourth Amendment. The district court granted the DEA's petition in January 2019. Ricco Jonas appealed to the U.S. Court of Appeals for the First Circuit. The First Circuit affirmed the lower court's decision on January 27, 2022, finding that the subpoena's true target was not the state, but even if it was, states are "persons" within the meaning of the CSA. The court further held that because of the closely regulated nature of the pharmaceutical industry and the third-party doctrine ("a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties"), a person has no reasonable expectation of privacy in prescription drug records. Ricco Jonas petitioned the U.S. Supreme Court for a writ of certiorari, but on October 3, 2022, the Court declined to hear the case.



## ELEVENTH CIRCUIT FINDS ZONING CODE DOES NOT DISCRIMINATE AGAINST SOBER LIVING HOME

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***Sailboat Bend Sober Living, et al v. City of Fort Lauderdale, FL.*, U.S. Court of Appeals for the Eleventh Circuit, Case No. 20-13444 (opinion filed August 26, 2022).** Between 2012 and 2017, the City of Fort Lauderdale (City) commenced multiple enforcement actions for violations of the City's building and fire codes against Sailboat Bend Sober Living (Sailboat Bend), a for-profit sober living home. At the time, Sailboat Bend housed up to 11 people recovering from substance use disorder. The City determined that the home qualified as either a "Lodging or Rooming House" or a "Residential Board and Care Occupancy." Both statuses impose greater safety requirements than those required for one- or two-family dwellings. Sailboat Bend reduced its capacity to avoid facing these requirements. In 2018, the City enacted a new zoning ordinance that restricted Sailboat Bend's ability to operate in residential areas. Sailboat Bend sued the City in Florida federal court for violating the Fair Housing Act, alleging that the City's enforcement actions constitute hostility to the disabled and that the zoning ordinance is discriminatory on its face. The district court entered summary judgment for the City in August 2020. Sailboat Bend appealed to the U.S. Court of Appeals for the Eleventh Circuit, which affirmed the district court's ruling on August 26, 2022. The Eleventh Circuit held that the evidence of discriminatory enforcement was so scarce that no jury could use it to find the City intended to discriminate against Sailboat Bend because of the residents' disabilities. The Court further found that the City's zoning ordinance is not discriminatory but is actually more favorable to people with disabilities, as it includes an exception permitting more than three disabled individuals to live in a single residence.

## FORMER FIREFIGHTER CAN COLLECT UNEMPLOYMENT BENEFITS DESPITE TESTING POSITIVE FOR CANNABIS

***City of Waterbury v. Administrator, Unemployment Compensation Act, et al., Appellate Court of Connecticut, Case No. AC 44635 (opinion filed November 29, 2022).*** In a case involving multiple administrative appeals, a Connecticut intermediate appellate court ruled that the City of Waterbury, Connecticut (Waterbury) cannot block a former fire department lieutenant from collecting unemployment benefits despite his termination for failing a drug test in violation of his last chance agreement. Waterbury employed Thomas Eccleston as a firefighter. In November 2015, after struggling with alcohol misuse, Eccleston entered into a last chance agreement with Waterbury and his union. The agreement contained several stipulations regarding Eccleston's employment, including a provision that he would face immediate termination if he tested positive for alcohol or a controlled substance. In February 2018, Eccleston received a prescription for medical cannabis under Connecticut's Palliative Use of Marijuana Act (PUMA; CONN. GEN. STAT. § 21a-408 *et seq.* (West 2022)). In March 2018, Waterbury terminated Eccleston's employment after he tested positive for cannabis during a random drug screen. In April 2018, Eccleston submitted a claim for unemployment benefits to the Administrator of the Unemployment Compensation Act (Administrator). Waterbury contested the claim for benefits, asserting that Eccleston was discharged for willful misconduct because he violated the last chance agreement by testing positive for a controlled substance. The Administrator decided in favor of Waterbury and denied Eccleston's claim for benefits. Eccleston appealed the decision to the Employment Security Appeals Division (appeals division), arguing that he was not discharged for willful misconduct. The appeals referee for the appeals division reversed the Administrator's decision, holding that Waterbury did not demonstrate that Eccleston was impaired at work or discharged due to disqualification under state or federal law from performing the work for which he was hired and, thus, it did not show that it discharged him for willful misconduct. Waterbury appealed the decision of the appeals referee to the Board of Review of the Employment Security Appeals Division (board), and the board affirmed the decision of the appeals referee. The board noted that while Eccleston signed the last chance agreement prior to the Legislature's approval of medical cannabis, PUMA was in effect at the time of the discharge. Thus, the board held that because the last chance agreement contained a blanket prohibition against the use of medical cannabis without specific considerations of the employee's fitness for duty, upholding the agreement would be unreasonable as of the date of Eccleston's discharge. Additionally, the board held that Eccleston's physician recommendation for medical cannabis constituted a mitigating circumstance against his violation of the last chance agreement, and, as such, prevented the board from finding that he committed willful misconduct. In March 2019, Waterbury appealed the decision of the board to a Connecticut trial court. The Administrator filed a motion for judgment seeking dismissal of the appeal, which the court granted. Waterbury appealed to



the intermediate appellate court arguing that the trial court: (1) erred in adopting the board's finding that PUMA applies in this case; and (2) erroneously affirmed the board's decision, which concluded that Eccleston was not discharged for willful misconduct. The appellate court rejected those arguments, holding that, because PUMA is relevant to the reasonableness of the last chance agreement, the board properly considered it in the resolution of this case. The court also ruled that employers and employees can agree to reasonably prohibit certain otherwise legal behaviors, but they cannot do so in a way that runs contrary to state law. Thus, the court determined that the decision of the board was not unreasonable or an abuse of discretion.

## CLASS ACTION FILED AGAINST PENNSYLVANIA TREATMENT PROVIDER WHO SUFFERED DATA BREACH

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***Dylan Morris v. Gateway Rehabilitation Center, U.S. District Court for the Western District of Pennsylvania, Case No. 2:22-cv-01678 (suit filed November 28, 2022).*** Dylan Morris, a former patient of Gateway Rehabilitation Center (Gateway), filed a federal class action lawsuit against Gateway over allegations that it failed to take adequate measures to protect clients from a June 2022 data breach that exposed the personal health information of 130,000 people. Morris claims that Gateway, a Pittsburgh-based drug and alcohol use disorder treatment services provider, failed to follow basic security procedures to protect its clients' personal information and mitigate the risk of ransomware attacks. The complaint asserts that Gateway failed to inform affected clients of the data breach within the 60-day window provided for in Pennsylvania law and, instead, waited five months to notify anyone. Per the complaint, information exposed in the breach includes names, dates of birth, Social Security numbers, driver's license and state ID numbers, financial account and payment card information, medical information, and health insurance information. Morris also claims that some of Gateway's data appears on the "dark web," which places the proposed class members at an increased risk of fraud, identity theft, misappropriation of health insurance benefits, intrusion of their health privacy, and other criminal acts. Morris brings forth causes of action for negligence, negligence *per se*, breach of fiduciary duty, and breach of confidence. Morris asks the court for damages, restitution, and declaratory and injunctive relief requiring Gateway to employ adequate security protocols consistent with law and industry standards.

## AIRLINE ENTERS CONSENT DECREE ALLOWING EMPLOYEE TO ATTEND BUDDHIST RECOVERY GROUP

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***Equal Employment Opportunity Commission v. United Airlines Inc., et al., U.S. District Court for the District of New Jersey, Case No. 2:20-cv-09110-KM-JBC (consent decree approved November 8, 2022).*** For previous updates on this case, please refer to the August 2020 issue of the LAPP *Case Law Monitor*, available [here](#). The U.S. Equal Employment Opportunity Commission (EEOC) and United Airlines, Inc. (United) agreed to a consent decree resolving a lawsuit that the EEOC filed against United claiming that the company engaged in unlawful employment practices by discriminating against an employee based on religion. The EEOC sought a federal court order requiring United to accommodate pilot David Disbrow's religious practices by allowing him to attend a Buddhism-based recovery group called Recovery Dharma, instead of Alcoholics Anonymous (AA), as part of United's pilot rehabilitation program called the Human Intervention Motivation Study (HIMS) Program. As part of the agreement, United will re-enroll Disbrow in the HIMS Program and will accept his participation in Recovery Dharma. In addition, within 30 days, United must distribute to all current employees who are enrolled, or who participate, in its HIMS Program an antidiscrimination policy that prohibits discrimination based on religion, outlines a procedure for making requests for reasonable accommodations to HIMS Program requirements, and identifies the individuals with whom complaints or reports of religious discrimination should be filed. Additionally, within 120 days, and annually thereafter for the term of the decree, United must provide all supervisory or management employees, and all other employees involved in the administration of its HIMS Program, no fewer than two hours of training on federal laws prohibiting discrimination in employment, with a special emphasis on laws requiring reasonable accommodations and religious discrimination. The consent decree requires United to pay Disbrow \$305,000, which includes \$128,100 in lost wages, \$152,500 in damages, and a deposit of \$24,400 in Disbrow's pension account. The decree will remain in effect for 27 months.

## KENTUCKY DETENTION CENTER AGREES WITH U.S. DEPARTMENT OF JUSTICE TO PROVIDE MAT

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**(Agreement announced November 8, 2022).** The U.S. Attorney’s Office for the Eastern District of Kentucky announced that it reached an agreement with the Lexington-Fayette Urban County Government’s Department of Community Corrections to ensure that individuals who take medication for addiction treatment (MAT) for opioid use disorder (OUD) can remain on their medication while in custody at the Fayette County Detention Center (FCDC). This agreement resolves an Americans with Disabilities Act compliance review of FCDC, in which the U.S. Attorney’s Office determined that the facility did not provide most individuals with MAT. The government’s investigation concluded that FCDC only provides MAT to pregnant individuals and prohibits the use of MAT for all other inmates with OUD. Per the agreement, FCDC must revise its policies to provide all inmates with OUD access to all three forms of MAT and ensure that decisions about treatment are based on an individualized determination by qualified medical personnel.

## BUCKS COUNTY, PA LOSES BID TO AVOID TRIAL REGARDING DEATH OF PRETRIAL DETAINEE

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***Nina Harbaugh v. Bucks County, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:20-cv-01685-MMB (motion for summary judgment denied November 4, 2022).** For previous updates on this case, please refer to the June 2020 issue of the LAPPA *Case Law Monitor*, available [here](#). A Pennsylvania federal court denied Bucks County’s motion for summary judgment in a case involving the 2018 death of Brittany Ann Harbaugh at the Bucks County Correctional Facility (BCCF) while she was a pretrial detainee. The plaintiff, Harbaugh’s sister, alleged that Bucks County acted with deliberate indifference to Harbaugh’s serious medical needs while she withdrew from opioids. Bucks County filed a motion for summary judgment in July 2022 as to all claims against it, arguing that the direct action against the County should fail because no individual state actor violated Harbaugh’s Eighth Amendment rights. The court rejected this argument because the U.S. Court of Appeals for the Third Circuit previously held that an individual municipal officer need not be liable for a court to find liability against a municipality. In its motion, Bucks County also asserted that it is “undisputed that the County is not deliberately indifferent” because: (1) it contracted with a medical provider for medical services at BCCF; and (2) medical screening and watch procedures existed at BCCF for patients with severe medical needs. The court disagreed with Bucks County, holding that proving the existence of policies is not the same as proving the adequacy of those policies. A jury could find that the screening procedures inadequately served the needs of inmates with serious medical issues and that Bucks County knew this. In fact, based on the allegation by the plaintiff, Bucks County arguably knew of deficiencies in the medical monitoring at BCCF “after: (1) a series of deaths of patients with serious medical needs; and (2) a 2017 accreditation report noting deficiencies in the execution of inmate monitoring policies.” Thus, because Bucks County failed to show that there was no genuine dispute as to any material fact, the court denied its motion for summary judgment. The court ordered the parties to file a status report by December 19, 2022.

## AQUESTIVE DID NOT PLAY AN ACTIVE ROLE IN INDIVIOR’S ALLEGED SUBOXONE SCHEME

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***In re Suboxone Antitrust Litigation*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 13-md-2445 (motion for summary judgment granted October 19, 2022).** For previous updates on this case, please refer to the October 2022 issue of the LAPPA *Case Law Monitor*, available [here](#). In a 33-page opinion, a Pennsylvania federal court judge granted Aquestive Therapeutics Inc.’s (Aquestive) motion for

summary judgment in antitrust litigation concerning Aquestive's role in an alleged scheme by Indivior, Inc. (Indivior) to extend its dominance in the opioid cessation drug market by switching to a new sublingual film version of Suboxone just as Indivior was set to lose its patent protection on the pill version of the drug. A group of state attorneys general argued that Aquestive, formerly known as MonoSol Rx LLC, participated in the antitrust conspiracy with Indivior. Based on the evidence presented, while the district court judge acknowledged that Aquestive may have suggested and known about Indivior's alleged plan to marginalize the tablet market, the court found that there was nothing to suggest that it actually participated in any part of Indivior's scheme other than by signing a supply agreement. The attorneys general presented no evidence to suggest that Aquestive played an active role in the pricing or marketing campaign of the Suboxone film or tablets. Instead, the judge concluded that Aquestive was simply an "interested observer." A trial has been proposed for May or June 2023.

## CALIFORNIA PHARMACIST CONVICTED IN BLACK MARKET PRESCRIPTION DRUG CONSPIRACY

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***United States v. Irina Sadovsky, U.S. District Court for the Central District of California, Case No. 2:18-cr-00375 (verdict reached October 14, 2022).*** Pharmacist Irina Sadovsky owned Five Star Pharmacy and Ultimate Pharmacy in Van Nuys, California. In June 2018, a California federal district court indicted her for health care fraud, unlicensed wholesale distribution of prescription drugs, payment and receipt of health care kickbacks, and other offenses, all relating to a conspiracy to illegally sell prescription drugs from 2016 to 2017. According to allegations in the indictment and evidence presented at trial, Sadovsky and her co-conspirators wrote fraudulent prescriptions, and bribed others to do the same, and submitted false claims to Medicare and Medicaid for drugs that were then sold on the black market. A jury convicted Sadovsky on October 14, 2022. She will be sentenced on April 7, 2023. On October 28, 2022, Sadovsky filed a motion for a new trial. The United States filed its opposition to the motion on November 7, 2022. To date, the court has not issued a ruling on the motion.

## TENNESSEE BABIES BORN DEPENDENT ON OPIOIDS SUE OPIOID COMPANIES

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***Baby Doe, et al v. Endo Health Solutions, Inc., et al, U.S. District Court for the Middle District of Tennessee, Case No. 3:22-cv-00771 (suit filed August 3, 2022).*** Six babies born dependent on opioids, collectively "the Baby Doe plaintiffs," filed suit against many drug manufacturers, drug distributors, chain and independent pharmacies, and pill mill prescribers under the Tennessee Drug Dealer Liability Act (DDLA; TENN. CODE ANN. § 29-38-106 (West 2022)). According to the suit, all six children suffered extreme withdrawal symptoms in their infancy, including excessive crying, arching their backs, refusal to eat, and shaking. The suit asserts that the defendants failed to properly monitor the initial spike in opioid prescribing and the later growth of illegal opioid distribution and diversion.<sup>1</sup> The Baby Doe plaintiffs argue that the defendants knew about widespread diversion and illegal distribution in Tennessee but continued to allow prescription opioids to flood the state. The plaintiffs request compensation for the "harm which they experienced from their first moments of life as they suffered from opioid withdrawal and continue to experience to this day as they struggle with the residual behavioral issues and learning disabilities caused by

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<sup>1</sup> Defendants include Endo Health Solutions; Par Pharmaceutical; Impax Laboratories; AMNEAL Pharmaceuticals; TEVA Pharmaceuticals; Allergan; Actavis; Watson Laboratories; Johnson & Johnson; Jansen Pharmaceuticals; AmerisourceBergen; Cardinal Health; McKesson Corporation; CVS Pharmacy; Rite Aid; Walgreens; and Walmart. The lawsuit also names several individuals and local companies.

their *in-utero* exposure to opioids.” Specifically, the plaintiffs ask the court for economic damages,<sup>2</sup> non-economic damages,<sup>3</sup> and punitive damages. Originally filed in Davidson County state court, the defendants removed the suit to federal court on September 30, 2022. On October 31, 2022, the Baby Doe plaintiffs filed a motion to remand the case back to state court or, in the alternative, a motion for leave to file an amended complaint and remand. The defendants filed their response to the motion on November 14. The court has yet to rule on the motion.

## GEORGIA PARENTS SUE KRATOM COMPANIES AND ORGANIZATIONS OVER SON’S DEATH



***Dana Pope and John Pope v. Optimized Plant Mediated Solutions, et al., State Court of Cobb County Georgia, Case No. 22-A-1536 (suit filed May 9, 2022).*** The parents of a Georgia man who died after ingesting kratom (*Mitragyna speciosa*) filed a wrongful death lawsuit on behalf of their son’s estate against individuals, companies, and organizations connected to the manufacturing, marketing, and sale of kratom.<sup>4</sup> Ethan Pope died on December 3, 2021, shortly after consuming Optimized Plant Mediated Solutions’ (O.P.M.S.) black liquid kratom. The county coroner and the Georgia Bureau of

Investigation ruled Pope’s cause of death to be “mitragynine intoxication.” Mitragynine is the main psychoactive component of kratom. Toxicology tests found no illicit drugs or alcohol in Pope’s system. The complaint asserts that kratom is unsafe for human consumption and that the defendants had actual and/or constructive knowledge that kratom ingestion could cause serious harm to consumers, including addiction, overdose, and death. The complaint also mentions that Georgia implemented a kratom consumer protection law (Georgia kratom law; GA. CODE ANN. §§ 16-13-120 to 16-13-122 (West 2022)) in 2019 after being lobbied by the American Kratom Association (AKA). The purpose of the Georgia kratom law is to protect consumers by making it a crime to sell kratom to anyone in the state under the age of 18 and to require that kratom product packaging bear a label with specific information.<sup>5</sup> The complaint asserts that the defendants’ products failed to comply with the Georgia kratom law because the labeling failed to: (1) name the principal mailing address of the manufacturer or the person responsible for distributing the product; (2) provide clear and adequate directions for the consumption and safe and effective use of such product; and (3) provide readable or adequate precautionary statements as to the safety and effectiveness of such products.

Additionally, the complaint notes that O.P.M.S. is a participant in AKA’s good manufacturing practices (GMP) program. For a brand to be listed on the AKA’s website as a qualified vendor in the GMP program, the brand must comply with all state and federal laws that concern kratom and food. The plaintiffs argue that AKA breached its duty to their son to operate the GMP program in a non-negligent manner and is liable for failing to ensure that O.P.M.S. complied with state law and continuing to hold O.P.M.S. out as compliant with their safety program. The plaintiffs bring forth causes of action for negligence, strict liability-warnings defect, strict liability-design defect, negligent misrepresentation, and civil conspiracy and are asking the court for all

<sup>2</sup> Economic damages under DDLA include, but are not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use. TENN. CODE ANN. § 29-38-106(c)(1) (West 2022).

<sup>3</sup> Non-economic damages under DDLA include, but are not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual’s use of an illegal drug. TENN. CODE ANN. § 29-38-106(c)(2) (West 2022).

<sup>4</sup> The defendants include Aether, LLC; Aghosh Corporation; American Kratom Association; Biopharmaceutical Technology Services, Inc.; David L. Watson; Jopen, LLC; L.P. IND., LLC d/b/a Olistica Life Sciences Group; LGI Holdings, LLC; Mark Reilly; Martian Sales, Inc.; O.P.M.S. a/k/a Optimized Plant Mediated Solutions; Peyton Shea Palaio; Mark Jennings; and World of Tobacco, Inc.

<sup>5</sup> For more information on Georgia’s Kratom Consumer Protection Law, please refer to LAPP’s “Kratom: Summary of State Laws,” available [here](#).

legally compensable damages, including the full value of Pope’s life. The plaintiffs filed an amended complaint on October 25, 2022. The case remains ongoing.

## FLORIDA WOMAN’S ESTATE FILES WRONGFUL DEATH SUIT AGAINST KRATOM MANUFACTURER

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***Devin Filippelli v. Grow, LLC, et al., U.S. District Court for the Southern District of Florida, Case No. 9:22-cv-81731-DMM (suit filed November 4, 2022).*** The estate of Krystal Talavera has filed a wrongful death and product liability action against Grow, LLC (d/b/a KD Incorporated and The Kratom Distro) and its owner, Michael Harder (collectively “defendants”). The lawsuit alleges that the defendant’s kratom products are responsible for Talavera’s death. On June 20, 2021, Talavera’s son found her unconscious on the living room floor and rushed her to the emergency room. At the hospital, medical personnel pronounced Talavera dead and an autopsy determined the cause of death to be “acute mitragynine intoxication.” According to the complaint, Talavera regularly purchased and consumed the defendants’ kratom products. The plaintiff asserts that the defendants misrepresented and misled consumers about the risks of kratom and that Talavera “suffered an untimely death as a direct and proximate result” of the kratom products that were manufactured, marketed, distributed, and sold by the defendants. Talavera’s estate brings forth claims of strict liability-failure to warn, strict liability- design and manufacturing defect, breach of warranty, fraudulent misrepresentation, negligence, and negligence *per se*. The estate is asking the court for general and special damages. It is worth noting that Florida does not have a Kratom Consumer Protection Law or any laws regulating kratom products on the state level.<sup>6</sup> The plaintiffs filed an amended complaint on November 11, 2022, and a jury trial is set for July 31, 2023.

## CVS, WALGREENS, AND WALMART ANNOUNCE GLOBAL OPIOID SETTLEMENT

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**(CVS and Walgreens announced November 2, 2022; Walgreens announced November 15, 2022).** CVS Health Corp. (CVS), Walgreens Boots Alliance Inc. (Walgreens), and Walmart Inc. (Walmart) tentatively agreed to pay more than \$13 billion to resolve most of the thousands of lawsuits accusing the pharmacy chains of mishandling opioids and contributing to the opioid epidemic. Under the tentative agreement: (1) CVS would pay up to \$4.9 billion to local governments in the U.S. and about \$130 million to Native American tribes over the next 10 years; (2) Walgreens would pay up to \$4.8 billion to local governments and \$155 million to tribes over 15 years; and (3) Walmart would pay up to \$3.1 billion to local governments. Pharmacy chains do not admit to any wrongdoing or liability as part of the settlements, which will not be final until enough states, counties, and cities agree to the deals. Walmart announced that at least 43 states must approve its settlement by December 15, 2022, while local governments will have the option to sign on until March 31, 2023. To date, neither CVS nor Walmart have announced the deadline for states and local governments to accept their respective deals.

## WALMART REACHES OPIOID SETTLEMENT WITH FLORIDA

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**(Settlement reached October 20, 2022).** Florida Attorney General Ashley Moody announced, via press release, that the state reached an agreement with Walmart. Walmart agreed to dispense 672,000 naloxone kits to all first responders across Florida and pay the state \$215 million to help fight the opioid epidemic. Walmart did not admit to any liability or wrongdoing as part of the settlement. Although Florida brought lawsuits against other major pharmacy chains regarding their respective opioid dispensing practices, it did not file a

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<sup>6</sup> For more information, please refer to LAPP’s “Kratom: Summary of State Laws,” available [here](#).



suit against Walmart. According to the attorney general, she believed it to be more efficient and valuable to the state to avoid a costly litigation with Walmart and instead work with the company to resolve Florida's potential claims through a settlement.

## TEVA REACHES OPIOID SETTLEMENT WITH NEW YORK

***In Re Opioid Litigation, New York Supreme Court, Suffolk County, Case No. 40000/2017 (settlement announced November 3, 2022).*** For previous updates on this case, please refer to the August 2022 issue of the LAPP Case Law Monitor, available [here](#). New York Attorney General Letitia James announced that her office secured \$523 million from Teva Pharmaceuticals, Ltd., its American subsidiary Teva Pharmaceuticals USA, and its affiliates (collectively "Teva") for their role in the opioid epidemic in the state. The funds will be paid out over the next 18 years. In addition to the payment, the agreement places certain operating restrictions on Teva that include banning high-dose opioids, prohibiting opioid marketing, restricting lobbying, and disclosing opioid clinical data. Additionally, the agreement secures injunctive relief from Teva's distributor Anda, Inc. (Anda), which includes ensuring the independence of Anda sales personnel who sell controlled substances from incentive-based compensation and retaliation. At the time of the announcement, Teva was the sole remaining defendant in the New York litigation not in bankruptcy. According to the attorney general, the settlement will also resolve opioid-based lawsuits filed against Teva by two New York counties, Nassau and Suffolk, if the local county governments approve it. Furthermore, this settlement resolves administrative charges brought by the New York Department of Financial Services in August 2020 against Teva alleging decades-long insurance fraud.

## MCKINSEY SETTLES LOCAL GOVERNMENTS' AND SCHOOL DISTRICTS' OPIOID-RELATED CLAIMS; OTHER CLAIMS REMAIN

***In re: McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation, U.S. District Court for the Northern District of California, Case No. 3:21-md-02996-CRB (settlement reached October 26, 2022; motion to dismiss denied October 27, 2022).***

- McKinsey & Company (McKinsey) agreed to settle claims by hundreds of local governments and school districts alleging that it contributed to the opioid epidemic through its work for Purdue Pharma (Purdue). McKinsey disclosed the settlement in principle in a court filing made on October 26, 2022, although it did not publicly disclose the terms. The parties involved in the settlement proposed to report to the court on the state of the settlement at a status conference in December 2022. McKinsey still faces claims by health insurance plans, Native American tribes, and families of children exposed to opioids *in-utero*.
- On October 27, 2022, the court denied McKinsey's motion to dismiss pending cases for lack of personal jurisdiction in states where the company did not directly do business. These plaintiffs included individuals and entities from Alaska, Arizona, Colorado, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Montana, New Mexico, Oklahoma, Oregon, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin (collectively "subject states"). In ruling for the subject states, the court held that McKinsey "purposefully directed its activities" at those states in its opioid consulting work. Evidence showed that McKinsey performed numerous acts directed at the subject states, including "creating granular analyses of market attractiveness of the subject states, creating target lists of prescribers in the subject states, working alongside Purdue sales representatives in the subject states, and working with Purdue to implement sales strategies in the subject states." Additionally, the court found that the plaintiffs adequately asserted that McKinsey's recommendations to increase opioid sales resulted in foreseeable harm to the subject states. On November 14, 2022, the court issued an order stating that McKinsey has until January 9, 2023 to file a motion to dismiss for failure to state a claim if the company intends to do so.

## DISTRIBUTOR CARDINAL HEALTH SETTLES SHAREHOLDER DERIVATIVE SUIT FOR \$124 MILLION

***In Re: Cardinal Health, Inc., Derivative Litigation, U.S. District Court for the Southern District of Ohio, Case No. 2:19-cv-02491 (settlement reached October 7, 2022).*** Shareholders of Ohio-based Cardinal Health, Inc. (Cardinal Health), one of the largest distributors of opioids in the United States, brought a derivative action against Cardinal Health’s board of directors in June 2019. (A “derivative” lawsuit is a suit brought by shareholders on behalf of a corporation.) The complaint alleged that the board failed in its duties under the Controlled Substances Act to ensure Cardinal Health did not provide its pharmaceuticals to individuals using them for an improper purpose and that it knowingly caused and permitted the illegal distribution of opioids for over a decade. The parties ultimately settled the litigation, with the final agreement approved by an Ohio federal district court on October 7, 2022. Neither Cardinal Health nor the individual board members admitted any liability. The defendants agreed to pay \$124 million to the plaintiffs in one of the largest derivative lawsuit settlements ever reached in Ohio.

### ABOUT LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication for addiction treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

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