



Louisiana Attorney General v. Janssen Pharmaceutical (St. Landry Parish, Louisiana)

Topics Covered: Patient Privacy

Outcome: Very Favorable

Issue

The issue in this case was whether physicians could adequately protect patient privacy in the face of a pharmaceutical company's subpoena for physicians' medical records relating to those patients.

AMA Interest

The AMA supports protection of patient privacy.

Case Summary

The Louisiana Attorney General sued Janssen Pharmaceutica, a subsidiary of Johnson & Johnson, for the fraudulent marketing of Risperdal to Medicaid patients. Measured in sales, Risperdal is a multibillion dollar per year drug. It has been FDA approved for certain mental illnesses, including bipolar disorder and some types of autism. It has not been approved for other types of mental illnesses. Also, it can cause severe side effects.

The complaint alleged that Janssen marketed the drug for purposes other than those that had been FDA approved, it did not properly disclose the known side effects, and it even covered up certain side effects. As a result, according to the Attorney General, physicians over-prescribed the drug, and Medicaid patients suffered the side effects in situations where they never should have received the medication. This caused the Louisiana Medicaid program to spend more money than was appropriate for the drug, and it also caused the Medicaid program to spend additional funds to treat the side effects.

The suit sought to recover (a) the unnecessary expenditures for the Risperdal prescribed as a result of the unlawful marketing, (b) the money spent to pay for the side effects of those patients who were improperly dosed with Risperdal as a result of the unlawful marketing, and (c) substantial monetary penalties. The claims were based on the Louisiana version of the False Claims Act, the Louisiana Unfair Trade Practices and Consumer Protection Law, and various common law/civil law causes of action.

Janssen originally wanted to send discovery subpoenas to all physicians who had been reimbursed under the Louisiana Medicaid program for prescribing Risperdal. It sought the

complete medical records of all patients who received the drug, going back to 1994. After objections from the Attorney General and following various pretrial conferences, the court ordered production of medical records from 150 physicians, covering 6000 patients. Janssen also planned to depose each of those 150 physicians. The discovery plan, however, is still tentative.

Although the court entered a protective order to preserve confidentiality and, apparently, comply with HIPAA requirements, the Louisiana State Medical Society ("LSMS") filed an amicus brief on January 30, 2008, to address discovery issues of particular concern to the affected physicians. The Litigation Center's support was cited in the LSMS brief. In late February 2008, the court quashed the subpoenas to the 150 physicians.

Litigation Center Involvement

The Litigation Center supports LSMS's position regarding the patient privacy issues arising from discovery requests for patients' medical records and will join in any further LSMS amicus briefs, should they be necessary.