

FILED

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

KNOX COUNTY CIRCUIT C
CATHERINE F. SHANKS, CL.

**STATE OF TENNESSEE,
ex rel. HERBERT H. SLATERY III,
ATTORNEY GENERAL and REPORTER**

Plaintiff

vs.

No. 1-173-18

PURDUE PHARMA, L.P.

Defendant

**MOTION FOR LEAVE TO INTERVENE FILED ON BEHALF OF DEBORAH W.
FISHER, INDIVIDUALLY, AND AS EXECUTIVE DIRECTOR OF THE
TENNESSEE COALITION FOR OPEN GOVERNMENT, AND JACK McELROY,
INDIVIDUALLY, AND AS EXECUTIVE EDITOR OF THE KNOXVILLE NEWS
SENTINEL, A PART OF USA TODAY NETWORK - TENNESSEE, TO OPEN
AND UNSEAL ALL PROCEEDINGS, RECORDS, EXHIBITS AND OTHER
MATERIALS OF ANY KIND IN THIS CAUSE**

Come now your Intervenors, Deborah W. Fisher, individually, and as Executive Director of the Tennessee Coalition for Open Government, and Jack McElroy, individually, and as Executive Editor of the Knoxville News Sentinel, a Part of USA Today Network - Tennessee, and respectfully move the Court, pursuant to Rule 24 of the Tennessee Rules of Civil Procedure, the Constitution of the State of Tennessee, the Constitution of the United States of America, and the common law, for leave to intervene in this cause for the purpose of opposing and objecting to any Order of this Court restricting public access to any records, exhibits, testimony, pleadings and other materials of any kind or nature received by the Court in the course of this litigation.

In support of this Motion, the Intervenor would respectfully show the Court the following:

1. The Tennessee Coalition for Open Government (TCOG) is the only non-partisan and non-profit organization in the State of Tennessee whose sole mission is to protect and promote citizen access to government information and public meetings through education and tracking and identification of developing issues aimed at preserving and improving government transparency.

2. TCOG works through a unique alliance of citizens, media organizations and good government groups. The mission of TCOG rests on the belief that access to government information through public records, open trials and public meetings is crucial in allowing informed citizen participation in a democratic society.

3. Since its inception in 2003, TCOG has conducted research into open government issues such as those reported in a series of articles commencing in statewide media on the 20th of May, 2018, as well as providing information about access issues to citizens, journalists, lawmakers and government officials. Among the members of the Board of Directors of TCOG are representatives of the Tennessee Press Association, the Tennessee Association of Broadcasters, the Associated Press and good government groups such as the League of Women Voters and Common Cause.

4. Deborah W. Fisher is a citizen and resident of Tennessee and the Executive Director of TCOG. In an Affidavit, attached as **Exhibit 1** to this

Motion, is a brief outline of the mission of TCOG and the participation in open government activities by its Executive Director, Deborah W. Fisher.

5. Jack McElroy is a citizen and resident of Tennessee and the Executive Editor of the Knoxville News Sentinel, a newspaper of general daily circulation in the State of Tennessee. Mr. McElroy, individually and in his capacity of Executive Editor of the Knoxville News Sentinel, has participated in many efforts to preserve and enhance open government and enforce the provisions of the Tennessee Open Meetings Act and the Tennessee Public Records Act.

6. The Knoxville News Sentinel is a part of USA Today Network - Tennessee.

7. In this cause, the State of Tennessee, on the 15th of May, 2018, filed a Motion seeking leave to file a Complaint against the Defendant, Purdue Pharma, L.P., under seal for a period of 10 days.

8. Pursuant to the Motion of the State of Tennessee, an Order granting leave to file the Complaint under seal was entered by this Court on the 15th of May, 2018. The Order granting leave to file the Complaint under seal contains several provisions of significance. First, only the Complaint is to be filed under seal. According to the Order, no other documents other than the Complaint are to be filed under seal. Second, the Order purports to extend to the Defendant a period of 10 days within which to file an Application to seek a Protective Order sealing certain documents and information. Because only the Complaint filed by the State is subject to restrictive Order, this Motion and the

Memorandum of Law, Citations of Authority and Argument filed in support thereof are not subject to the restrictive or confidentiality Order and are, therefore, a part of the public record.

9. Upon information and belief, based upon independent investigation, Intervenor's assert that they have formed the opinion that the matters contained in the Complaint involve issues of immense public interest.

10. The suit filed by the State of Tennessee is in the nature of a civil enforcement action against a large branded manufacturer of opioids and is an effort to address the current opioid epidemic in Tennessee which is widely believed to be one of the most significant health crises in the history of the State.

11. The suit is brought under the Tennessee Consumer Protection Act (TCPA) against the Defendant to (1) protect consumers and the integrity of the commercial marketplace in Tennessee, (2) to remedy the Defendant's violations of a 2007 Agreed Final Judgment (2007 Judgment), and (3) to abate and remedy a statewide public nuisance created by the Defendant's interference with the commercial marketplace and endangerment of the public health.

12. It is alleged that the Defendant violated the TCPA by making a series of unlawful safety, comparative, and benefit claims about its opioid products, failing to disclose its material connection to third-party pain advocacy groups it substantially funded, and unfairly targeting vulnerable populations like the elderly.

13. Specifically, the Defendant is alleged to have made false, deceptive, and/or unsubstantiated claims about its opioid products or opioids in general including but not limited to:

- a. Representing without qualification that OxyContin has no dose ceiling in spite of potential adverse effects at higher doses such as death and respiratory depression, among others;
- b. Understating the risk of addiction from its opioid products by perpetuating the discredited concept of pseudoaddiction, which encouraged prescribers to prescribe more, not fewer, opioids to individuals exhibiting drug-seeking behavior;
- c. Understating the risk of addiction by overstating the effectiveness of tools prescribers could use in their pain management practices to reduce or mitigate the risk of addiction;
- d. Failing to disclose the increased risk of addiction from its opioid products at higher doses while making claims about high doses of opioids through upward titration or otherwise;
- e. Failing to disclose the lack of substantiation supporting the long-term use of its opioid products while making claims advocating long-term use;
- f. Falsely representing that its opioid products produced fewer peaks and valleys than short acting opioids leading to less euphoria, less abuse, and more effective pain relief;
- g. Making sweeping safety claims about its opioid products without qualification;
- h. Broadly representing that its own products are safer or more effective than competing opioid and non-opioid products;
- i. Representing that its opioid products could improve a user's quality of life generally;
- j. Representing that its opioid products could improve a user's ability to function;
- k. Representing that its opioid products could improve a user's sleep or acted as a sleep aid; and


14. The legislature of the State of Tennessee, during its just completed session, has addressed, in at least several legislative efforts, the issue of opioid addiction in the State of Tennessee.

15. The issue of opioid addiction and questions regarding the prescription of such medications has been widely debated and discussed in the media and in public and private meetings and gatherings.

16. There is a compelling interest by the citizens in the State of Tennessee pertaining to information regarding this issue. Not the least of these concerns is that whatever flows from opioid addiction becomes a matter of critical importance to the fabric of families, cities and counties as well as to taxpayers of the State of Tennessee who will inevitably be asked to, through their tax contributions, to assume the responsibility for the damages and losses suffered by the citizens of this state.

It is, therefore, respectfully submitted that, pursuant to applicable law as reflected by the Memorandum of Law, Citations of Authority and Argument filed contemporaneously with this Motion, the Intervenor should be permitted to intervene and be granted the relief requested.

Respectfully submitted, this 21ST day of May, 2018.


Richard L. Hollow, BPR No. 0000593
Attorney for Intervenor

HOLLOW & HOLLOW, L.L.C.
P. O. Box 11166
Knoxville, TN 37939-1166
Ph. 865-769-1715

CERTIFICATE OF SERVICE

Comes now Richard L. Hollow, attorney for Intervenor, and certifies that a true and exact copy of the Motion for Leave to Intervene has been served upon the following counsel by placing it in the United States Mail, postage prepaid:

Brant Harrell, BPR No. 024470
Senior Counsel
Margaret Rowland, BPR No. 033513
Assistant Attorney General
Carolyn U. Smith, BPR No. 017166
Senior Counsel
Office of the Attorney General of Tennessee
Consumer Protection and Advocate Division
UBS Tower, 20th Floor
315 Deaderick Street
Nashville, TN 37243

This 21ST day of May, 2018.



Richard L. Hollow

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**STATE OF TENNESSEE,
ex rel. HERBERT H. SLATERY III,
ATTORNEY GENERAL and REPORTER**

Plaintiff

vs.

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Defendant

No. 1-173-18

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF WILLIAMSON

Comes now Deborah W. Fisher and, after being duly sworn according to law, makes oath as follows:

1. I am Deborah W. Fisher. I am over the age of 18 and competent to testify and make these statements of my own personal knowledge.

2. I joined the Tennessee Coalition for Open Government ("TCOG") as its Executive Director in November of 2013, a position which I continue to hold.

3. TCOG is the only non-partisan 501(c)(3) organization in the state whose sole mission is to protect and promote citizen access to government proceedings and records through education, tracking and

identification of developing issues aimed at preserving and improving government transparency.

4. TCOG works through a unique alliance of citizens, media organizations, and good government groups. TCOG's mission rests on the belief that public access to government information, through public records, public meetings and court access, is crucial in allowing informed citizen participation in a democratic society. This access provides accountability of government to people and helps citizens better understand government so that they can make more informed decisions related to government.

5. Since its inception in 2003, TCOG has provided training and presentations to thousands of Tennessee citizens, including members of civic groups, journalist groups, and news organizations, including the Tennessee Press Association and Tennessee Association of Broadcasters. TCOG also has offer on-the-spot guidance to thousands of individuals through its Help Line, including members of the press who are reporting on public affairs and ordinary citizens who are seeking access to government information. TCOG has conducted research into open government issues, providing information about access issues to citizens, journalists, lawmakers and government officials. An example of recent research that I conducted as executive director of TCOG is a statewide public records policy audit "A survey of 306 Tennessee counties, cities and school districts" which was distributed in May of 2018 and was reported upon by news media across the state.

6. Four members of TCOG's Board hold seats on the State of Tennessee Advisory Committee on Open Government. TCOG also participates

as a member of the National Freedom of Information Coalition (NFOIC), an alliance of similar open government groups in all 50 states who share information and programs with the goal of improving citizen access and education at all levels. TCOG hosted the national summit of NFOIC in Nashville in October of 2017, bringing in experts and participants from across the country to deliver and participate in sessions on research and trends related to public access to government information. TCOG in 2015 received the Intellectual Freedom Award from the Tennessee Library Association.

7. The TCOG Board of Directors consists of 21 members, including representatives of the Tennessee Press Association, the Tennessee Association of Broadcasters, The Associated Press, representatives of civic groups that focus on government including the League of Women Voters - Tennessee, Beacon Center of Tennessee, the American Civil Liberties Union - Tennessee, and Common Cause; attorneys and law firms emphasizing First Amendment practice; and individual citizens. Members of the Board of TCOG serve without compensation as a public service to the citizens of Tennessee. As Executive Director of TCOG, I have conducted nearly five dozen training sessions and civic presentations throughout Tennessee since 2014. I regularly send out e-mail newsletters to more than 700 subscribers in Tennessee about open government developments; have been the author of more than 40 columns and opinion pieces for newspapers in the State of Tennessee since 2014, and regularly provide perspective to the news media who are reporting on open government. As executive director, I maintain and update a website with news about open government in Tennessee, www.tcog.info.

8. From 2014 to 2018, I have provided public testimony to Senate and House committees in the State of Tennessee commenting on proposed legislation and other open government issues. I provided written comments in 2016 to the House State Government Committee as part of a study on public access to law enforcement body camera footage, which included results of a scientifically-conducted poll commissioned by TCOG. I provided written comments in 2016 to the Office of Open Records Counsel, a state agency, on development of its Best Practices and a Model Public Records Policy. I am co-author of a publication entitled "Keys to Open Government in Tennessee", a 52-page guide to the state's open government laws.

9. I obtained a BA with Honors in Journalism at Baylor University. Prior to taking my appointment with TCOG, I worked as a professional journalist in daily newspapers for 25 years in roles that have included executive editor, senior editor for news, managing editor, business editor, day city editor and news reporter. I spent 11 years on the staff of the Corpus Christi (Texas) Caller-Times where I held the position of executive editor and vice president for a period of three years. I worked at The Tennessean in Nashville for 10 years, where I was senior editor for news until August of 2013. In addition to serving as TCOG's executive director, I also am the director of the John Seigenthaler Chair of Excellence in First Amendment Studies at Middle Tennessee State University, which provides programs to promote awareness and understanding of the First Amendment and to support quality journalism in the state by deepening the experiences of students through partnerships with news organizations. In that role, I also manage the

online, searchable Encyclopedia of the First Amendment, a dynamic repository of more than 1,500 articles on court cases, concepts and legal terms, laws, people and the historical development of the First Amendment.

10. I am past president of the Middle Tennessee Professional Chapter of the Society of Professional Journalists and its current freedom-of-information chair. I also am on the board of directors of the National Freedom of Information Coalition (NFOIC) and hold the officer position of secretary. The mission of NFOIC is to make sure state and local governments and public institutions have laws, policies and procedures to facilitate the public's access to their records and proceedings. I am a former member and board member of the Nashville Women's Breakfast Club, a professional career group.

11. Some recognition and journalism awards which I have earned personally or as part of a team as an editor are:

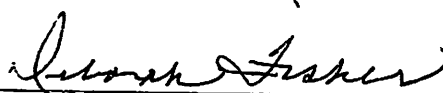
- Finalist, Pulitzer Prize for breaking news, Nashville flood of 2010;
- 1st place, Associated Press Sports Editors, project on youth concussions in 2012;
- 1st place, APME, online storytelling, project on abortions in Tennessee in 2012;
- 1st place, Society of Professional Journalists Green Eyeshade Awards, non-deadline online reporting, project on abortions in 2012;
- Best in Business, Society of American Business Editors and Writers, investigative report on abuses in assisted living centers in 2012;
- 1st place, Tennessee AP Media Editors, special section on youth concussions in 2012;
- Malcolm Law Memorial Award for Investigative reporting, Tennessee AP Media Editors, project on deaths in drug rehabilitation center in 2011;

Chairman's Award from Gannett;
Y Women in Careers recipient from YWCA of Corpus Christi, 2001.

12. In my capacity as Executive Director of TCOG and operator of its Help Line, I have received inquiries from journalists when courts have sealed records. I have written extensively on access to government records when those records offer insight into how the government is enforcing laws and regulations.

13. Since I have been executive director, TCOG has filed amicus briefs in a case involving the audibility of a public meeting of the Greene County Industrial Development Board, and at the appellate level, in a case related to denial of a public records request based on the delivery method (by email and telephone) that the request was received. TCOG has provided comments to the Tennessee Supreme Court on a proposed change to Rule 30 related to journalists using electronic tools in courtrooms.

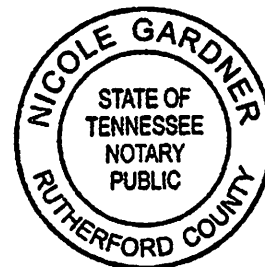
Further Affiant saith not.


Deborah W. Fisher

Sworn to and subscribed before me
this 18 day of May, 2018.


Notary Public

My Commission Expires: 5/19/20



My Commission Expires May 19, 2020