

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.)
 THOMAS J. MILLER,)
 ATTORNEY GENERAL OF IOWA,)
 99AG25112,)
)
 Plaintiff,)
)
 v.)
)
 CAREMARK Rx, L.L.C., CAREMARK, L.L.C.,)
 and)
 CAREMARKPCS, L.L.C. formerly known as)
 ADVANCEPCS,)
)
 Defendants.)

EQUITY NO. CE58309

PETITION

FILED
 POLK COUNTY IA
 08 FEB 14 AM 9:15
 CLERK DISTRICT COURT

INTRODUCTION

COMES NOW the state of Iowa ex rel. Attorney General Thomas J. Miller, by Special Assistant Attorney General William L. Brauch, pursuant to the provisions of Iowa Code § 714.16 (2007), commonly referred to as the Iowa Consumer Fraud Act, and files this claim against defendants Caremark Rx, L.L.C., Caremark, L.L.C., and CaremarkPCS, L.L.C., formerly known as AdvancePCS, and states as follows:

JURISDICTION AND VENUE

1. This action is brought by the State of Iowa ex rel. Attorney General Thomas J. Miller, which has jurisdiction to bring this action pursuant to Iowa Code section 714.16.
2. Defendants at all times mentioned herein have advertised and transacted business in Polk County and elsewhere within the State of Iowa. The State of Iowa invokes the jurisdiction of this Court pursuant to the provisions of Iowa Code section 714.16. The violations of law

described herein have occurred in Polk County and elsewhere in the State of Iowa. Venue is proper in Polk County pursuant to the provisions of Iowa Code section 714.16(10).

PARTIES

3. Plaintiff, the State of Iowa ex rel. Attorney General Thomas J. Miller, is charged with the enforcement of the Iowa Consumer Fraud Act, Iowa Code section 714.16.

4. Defendants Caremark Rx, L.L.C., Caremark, L.L.C., and CaremarkPCS, L.L.C. (collectively referred to as "Caremark" or "Defendants") are Delaware Limited Liability companies that conduct business nationwide. The Defendants' operations are conducted primarily through Caremark L.L.C., a wholly-owned, indirect subsidiary of Caremark Rx and CaremarkPCS (f/k/a AdvancePCS), a wholly-owned, direct subsidiary of Caremark Rx. Caremark Rx acquired AdvancePCS on March 24, 2004. Caremark provides pharmacy benefit management services to over 2,000 health plan clients servicing persons in Iowa and nationwide.

5. Caremark operates, or has operated, seven prescription drug mail order pharmacies in the states including but not limited to mail order pharmacies located in Alabama, Arizona, Florida, Illinois, Pennsylvania, and Texas.

6. Caremark operates, or has operated, a retail pharmacy network with over 59,000 participating pharmacies.

7. Caremark operates, or has operated, a prescription drug repackaging facility in Northbrook, Illinois, located in Cook County, Illinois.

DEFENDANTS' COURSE OF CONDUCT

Pursuant to the Attorney General's Investigation, the State alleges the following:

8. Many Americans have a health benefit which includes a pharmacy benefit component that pays for prescription drugs, in whole or in part. Whether provided by an employer, a health plan, a government agency, a union or another entity (the "client" or "Client Plan"), this pharmacy benefit is typically managed by a pharmacy benefit manager ("PBM") such as Caremark. A PBM is a business which specializes in administering the pharmacy benefit in return for payment - in some form - by the Client Plan.

9. According to Caremark, it is one of the nation's largest PBMs based on 2006 net revenues of approximately \$36.8 billion.

10. As a PBM, Caremark represents that it performs the following services:

a) Organizing a network of retail pharmacies ("retail network") that agree to fill prescriptions for a negotiated price. The retail network may consist of some or all of the approximately 59,000 retail pharmacies in the United States;

b) Operating mail order pharmacies which sell prescription drugs, including more than 516 million prescriptions in 2006, directly to persons with a pharmacy benefit ("Plan Participants");

c) Administering the pharmacy benefit by processing and paying claims through the operation of a proprietary computer system;

d) Providing Plan Participants, physicians, and Client Plans with information about the operation of their pharmacy benefit and cards or other methods to access the benefits;

and,

e) Developing and managing formularies, as described further below.

11. Formularies are lists of drugs for which a Client Plan agrees to pay on behalf of

the Plan Participant, either in whole or in part. For example, "open formularies" permit payment for any prescription drug. "Closed formularies" limit payment to specific drugs - for example, only generics, or only one preferred brand drug within a so-called "therapeutic class." "Tiered formularies" require Plan Participants to pay lower or higher co-pays depending on whether a drug is a generic, preferred brand, or non-preferred brand.

12. Caremark enters into contracts with drug manufacturers in which the manufacturer agrees to pay rebates to Caremark based on placement of a manufacturer's drug on a formulary.

13. Many drug manufacturers pay Caremark "base" rebates, typically calculated by applying a flat percentage to Caremark's purchases of that manufacturer's drugs.

14. Many manufacturer contracts also contain more targeted rebates that are tied to specific sales or performance goals. For example, manufacturers will typically pay Caremark "market share" or "performance" rebates, where Caremark is paid a percentage rebate on a sliding scale, that is tied to an increase in the market share for a specific drug.

15. Caremark provides mail order pharmacy services to Client Plans including governmental entities and private parties.

16. While managing its clients' prescription drug benefits, Caremark engages in a "therapeutic interchange" or "drug switching" program, in which certain drugs that physicians prescribed for Plan Participants are targeted by Caremark for a switch from the prescribed drug to a different drug.

17. Caremark's drug switching programs are determined largely by Caremark's desire to maximize its receipt of rebates from drug manufacturers.

18. When Caremark solicits prospective and existing Client Plans, Caremark fails to

clearly and conspicuously disclose material information about its drug switching programs, including the fact that it will retain rebates that it receives from the drug manufacturers as a result of drug switching.

19. Caremark represents to physicians and to Plan Participants that drug switches save Plan Participants and/or the Client Plan money, when that is not necessarily the case. In fact, some drugs to which Plan Participants are switched actually cost more or approximately the same amount as the originally prescribed drug.

20. With respect to certain drug therapies, a switch from one drug to another in the same therapeutic class often requires the Plan Participant to undergo one or more tests, and may require one or more doctor visits, to monitor the new drug therapy and ensure the new drug's efficacy. Plan Participants would not have incurred these additional health care costs but for Caremark's drug switches.

21. Caremark, in its contracts with retail network pharmacies, fails to require the pharmacy to disclose to the Plan Participant if the pharmacy's usual and customary ("U&C") price for the drug is less than the applicable co-payment and fails to require the retail pharmacy to allow the Plan Participant to pay the U&C price, if it is lower than the applicable co-payment.

22. Caremark engages in a variety of programs and activities for which drug manufacturers and other business entities pay Caremark to perform. For example, Caremark sells various kinds of data it derives from its records of prescription sales to Plan Participants. Caremark distributes this information and marketing materials to physicians and Plan Participants to promote particular drugs to those physicians and Plan Participants.

23. Caremark also enters into contractual agreements with drug manufacturers to market

and promote specific drugs to physicians, through mailings and other communications with those physicians.

24. Caremark fails to clearly and conspicuously disclose to Client Plans and physicians that it engages in these marketing and promotional activities on behalf of drug manufacturers, that it receives fees from the drug manufacturers for performing these activities, and that it collects those fees for its own benefit.

25. Previously dispensed drugs are sometimes returned to Caremark's mail order pharmacies, either because the drug could not be successfully delivered to the Plan Participant, or because the drug was returned or rejected by the Plan Participant, or for some other reason.

26. Since at least 1999, through at least June 2003, Caremark has restocked and re-shipped previously dispensed drugs that have been returned to its mail order pharmacies.

27. Caremark fails to clearly disclose to Plan Participants that it restocks and re-ships previously dispensed drugs.

28. Caremark, itself and through the mail order pharmacies, is engaged in the practice of pharmacy and is licensed to do so under the laws of various states in which its mail order pharmacies are located. As a licensed pharmacy, Caremark owes certain duties to the Plan Participants whose prescriptions it receives, fills, or arranges to fill.

29. Caremark employs licensed professional pharmacists and licensed, certified, or designated pharmacy technicians who perform or assist in performing professional pharmacy services for Plan Participants.

30. Caremark represents to Client Plans and to Plan Participants, directly or by implication, that it will provide the same professional pharmacy services performed by professional

pharmacists at non-mail order pharmacies. These services, if properly performed, assure quality of care for Plan Participants through prevention of adverse drug interactions, verification of drug strength and dosage regimens, recommendation of alternative medically appropriate drugs, and monitoring outcomes.

31. Caremark has committed unfair or deceptive acts or practices through its violation of pharmacy ethics by:

- a) Failing to fully disclose to Plan Participants, Client Plans, and physicians all of the material facts concerning proposed drug switches, including the nature and amount of Caremark's financial interest, and savings to the Plan Participant and the Client Plan, if any; and
- b) Failing to require that its pharmacists form an independent, professional judgment about the propriety of a drug switch before proposing it, and by promoting protocols and work environment that operate counter to this obligation.

32. This petition for injunctive relief has not been presented to, or denied by, any other judge of the district court.

33. Pursuant to Iowa R.CIV.P. 1.207, no security is required of the State.

APPLICABLE STATUTE

34. Section 714.16(2)(a) of the Iowa Consumer Fraud Act states in relevant part as follows:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon

the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

VIOLATIONS

35. The allegations contained in paragraphs 1 - 32 are incorporated herein by reference.

36. The Defendants have violated section 714.16(2)(a) by:

a) Engaging in certain unfair and/or deceptive acts or practices and procedures at Caremark's mail order pharmacies, retail pharmacies, customer call centers, and corporate offices, related to Caremark's drug interchange practices, and disclosures to Client Plans, health care providers, prescribers, and Plan Participants concerning Caremark's drug interchange practices;

b) Engaging in certain unfair and/or deceptive acts or practices relating to disclosures to prescribers and Plan Participants relating to drug interchange practices and potential cost savings;

c) Engaging in certain unfair and/or deceptive acts or practices relating to Caremark's receipt of payment from pharmaceutical manufacturers for the distribution of information and materials to health care providers, prescribers, and Plan Participants, and disclosures to Client Plans, health care providers, prescribers, and Plan Participants concerning that practice, and the disclosure and retention of rebates and other payments

received from pharmaceutical manufacturers;

- d) Engaging in certain unfair and/or deceptive acts or practices relating to Caremark's disclosures to Client Plans, health care providers, prescribers, and Plan Participants related to Caremark's receipt of manufacturer payments;
- e) Engaging in certain unfair and/or deceptive acts or practices relating to Caremark's practice of restocking returned drugs;
- f) Engaging in certain unfair and/or deceptive acts or practices relating to Caremark's provision, or lack of a provision, in its contracts with retail network pharmacies requiring the pharmacy to disclose to the Plan Participants if such pharmacy's U&C price for the particular drug dispensed is less than the applicable co-payment;
- g) Engaging in certain unfair and/or deceptive acts or practices relating to Caremark's provision, or lack of a provision, in its contracts with retail network pharmacies allowing the Plan Participant to pay either the co-payment or the U&C price, whichever is lower;
- h) Engaging in certain unfair and/or deceptive acts or practices relating to provisions in Caremark's contracts with retail pharmacies regarding procedures that the retail pharmacies must follow when implementing a drug interchange as part of any Caremark drug interchange program; and
- i) Engaging in certain unfair and/or deceptive acts or practices relating to compliance by Caremark pharmacists with pharmaceutical ethical principles and guidelines, to the extent failure to comply violated consumer protection statutes.

REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court order relief against defendants as follows:

A. Pursuant to Iowa Code section 714.16(7), that all defendants, their successors, agents, representatives, employees, and all persons who act in concert with them be permanently enjoined from engaging in the acts and omissions alleged herein to violate Iowa Code section 714.16.

B. That the Court, pursuant to Iowa Code section 714.16(7), order defendants to restore any money to consumers whom the Court deems to be entitled to reimbursement as a result of defendants' unlawful acts or practices.

C. That the Court, pursuant to Iowa Code section 714.16(7), impose civil penalties upon defendants in an amount to be determined by the Court, but not to exceed forty thousand dollars per violation, per defendant.

D. That the Court, pursuant to Iowa Code section 714.16A, impose additional civil penalties upon defendants in an amount to be determined by the Court, but not to exceed five thousand dollars per violation, per defendant, for each violation of Iowa Code section 714.16 against a person sixty-five years of age or older.

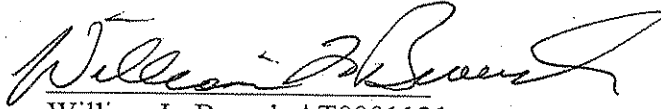
E. That the Court, pursuant to Iowa Code section 714.16(11), order defendants to pay plaintiff's costs, including but not limited to reasonable attorney fees and investigative costs incurred in this action.

F. That the Court order defendants to pay all court costs.

G. That the Court retain jurisdiction to enforce this order, including any injunction ordered by the Court.

Respectfully submitted,

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