

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No.

STATE OF VERMONT,)
)
Plaintiff,)
)
 v.)
)
PUBLICIS HEALTH, LLC,)
)
Defendant.)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The Vermont Attorney General brings this action against Defendant Publicis Health, LLC (“Publicis”) for violations of the Vermont Consumer Protection Act, 9 V.S.A. § 2451, *et seq.* (“CPA”). For these violations, the Attorney General seeks civil penalties, restitution, injunctive relief, disgorgement, fees and costs, and other appropriate relief.

I. PARTIES, JURISDICTION AND VENUE

A. Plaintiff

1. Plaintiff is the State of Vermont.
2. The Attorney General is authorized to represent the State in all civil matters at common law and as allowed by statute. Vt. Stat. Ann. Tit. 3, § 152. The Attorney General is charged with the responsibility of enforcing the Vermont Consumer Protection Act. 9 V.S.A. 2451, *et seq.*

B. Defendant

3. Defendant Publicis is a Delaware limited liability company headquartered in New York, New York. Publicis's ultimate corporate parent is Publicis Groupe, S.A. ("Publicis Groupe"), a publicly traded joint stock limited liability company organized under the laws of France. At all times relevant to this proceeding, Publicis did business in Vermont. The term "Publicis" as used in this Complaint includes, collectively, Publicis Health, LLC and each of its American affiliated entities that worked on opioid related matters from 2010 through 2021: Razorfish Health, LLC, Verilogue, Inc., Publicis Health Media, LLC, Rosetta Marketing Services, LLC, Saatchi & Saatchi Healthcare Communications, Inc., d/b/a Razorfish Health.

4. Whenever in this Complaint it is alleged that Publicis did any act, it is meant that Defendants:

- a. Performed or participated in the act; or
- b. Their officers, successors in interest, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of one or more of the Defendants.

C. Jurisdiction and Venue

5. The Court has personal jurisdiction over Defendant because Publicis has transacted business within the state at all times relevant to this Complaint.

6. Venue in this Court is proper because Defendant transacts business in Vermont or some of the transactions upon which this action is based occurred in Vermont and caused harm to Vermont consumers.

II. FACTUAL ALLEGATIONS

7. Beginning in the mid-1990s and continuing through the late 2010s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions across the United States, including in Vermont. The rise in opioid prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

8. Prescription opioids continue to kill people across Vermont every year. Many more suffer from negative health consequences short of death and countless others have had their lives ruined by a friend or family member's addiction or death. Every community in Vermont suffers from the opioid crisis of addiction and death.

9. Publicis is one of the world's largest healthcare advertising companies with 40 offices and 11 brands worldwide. Publicis advertises to potential clients that it can translate healthcare marketing into healthcare engagement.

10. The State brings this action against Publicis for the advertising and marketing consulting services it provided to opioid manufacturers, including Purdue Pharma L.P. (along with related entities Purdue Pharma Inc., and the Purdue Frederick Company, collectively "Purdue"). Publicis was in a Master Services Agreement with Purdue from 2010 to 2021. Over the decade of the Purdue-Publicis partnership, Purdue paid Publicis more than \$70 million for dozens of unfair and deceptive marketing schemes.

11. From 2010 until 2019, Purdue was Publicis' top opioid client, and Publicis was Purdue's number one marketing partner, serving as Purdue's "agency of record." Publicis worked with Purdue to promote branded opioids OxyContin, Butrans, and Hysingla and helped develop unbranded marketing campaigns.

12. Publicis's projects covered all aspects of Purdue's marketing and sales, including designing sales strategies and tactics, maximizing the reach and influence of Purdue's sales force, using electronic media, designing content, developing promotional messaging, drafting scripts and other materials for Purdue sales representatives to use with prescribers, helping with internal operations and sales activities, targeting prescribers who would be most likely to prescribe large amounts of opioids, recording intimate discussions between prescribers and patients about opioids, and a variety of other marketing, consulting, and sales activities.

13. Publicis created many of the materials that Purdue's sales representatives used when they met with prescribers including an OxyContin Patient Essentials Kit which contained an OxyContin Savings Card. These kits and savings cards were designed to—and did—lure prescribers and patients into extending the length of opioid prescriptions.

14. Publicis developed and created materials that deceptively promoted (i) physicians' "titration" of extended-release opioids to higher and more dangerous doses, increasing the likelihood of addiction; (ii) physicians' conversion of immediate-release opioid prescriptions to more dangerous extended-release OxyContin prescriptions; (iii) Purdue's false messaging that its abuse-deterrent OxyContin formulation was safe and prevented abuse, despite knowing that the formulation would not stop illicit use of OxyContin because the pills could still be abused orally; and (iv) Purdue's opioid drugs as safe and appropriate for medical conditions for which they are not approved.

15. Publicis also concocted a strategy to deploy Purdue's sales force to increase opioid sales through unbranded marketing including advising and assisting Purdue in deploying front groups and key opinion leaders to disseminate messaging that prescription opioids were safe and less addictive. Under the guise of neutrality, these groups and opinion leaders conveyed this

message to healthcare providers, patients, and policymakers without disclosing that they were being paid or financed by Purdue.

16. In addition to the sales campaigns it created, Publicis facilitated Purdue's partnerships with other entities. Publicis coordinated and implemented Purdue's work with McKinsey and Company, Verilogue, Inc., and Practice Fusion, Inc.

17. Publicis worked alongside McKinsey to strategize, develop, and implement Purdue's "Evolve to Excellence" marketing scheme. The "Evolve to Excellence" scheme was intended primarily to—and did—flood the most prolific prescribers of OxyContin with additional sales representative calls and messaging, including messaging involving the purported "abuse deterrent" aspects of OxyContin as well as the claimed benefits of converting patients to OxyContin and titrating them up to higher doses.

18. Publicis enabled Purdue's work with another Publicis subsidiary, Verilogue. Verilogue provided prescribers small digital recording devices to record intimate conversations with patients. These conversations were then used by Verilogue and Purdue to figure out how to best overcome patients' concerns about taking opioids. Publicis implemented Verilogue's recommendations in its marketing materials.

19. Publicis encouraged and facilitated Purdue's partnership with Practice Fusion and the use of Practice Fusion's Clinical Decision Support alerts ("CDS alerts"). As early as 2012, Publicis advocated that Purdue use Practice Fusion's electronic medical records platform to grow opioid prescriptions. Practice Fusion's CDS alerts gave prescribers information about extended-release opioids right at the point of prescribing, the exact time when a decision about treatment was being made. The Practice Fusion alerts continued until the Spring of 2019. In 2020, following an investigation by the United States Department of Justice into Practice Fusion's CDS alerts and

Purdue, Practice Fusion paid a \$145 million fine and entered into a deferred prosecution agreement admitting to an illegal kickback scheme in which Practice Fusion was paid by Purdue to create and deploy the CDS alerts in electronic health records to increase prescriptions of Purdue's opioids.

20. Publicis distributed hundreds of millions of dollars up the corporate chain to its foreign corporate parent, Publicis Groupe, during the time that Publicis worked with Purdue to deceptively promote opioids. These distributions from Publicis continued—and there are indications that the amounts increased—as Purdue and Publicis faced increasing public and governmental scrutiny for their deceptive conduct.

III. CLAIM FOR RELIEF

Violation of Vermont Consumer Protection Law Unfair Acts and Practices

21. Plaintiff realleges and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

22. In the course of its business, Publicis unconscionably worked with certain of its opioid manufacturing clients to aggressively promote and sell more opioids to more patients for longer periods of time.

23. These acts or practices may be deemed unfair in that they offend public policy reflected in (a) the CPA, which protects consumers and competitors from deceptive marketing and to ensure an honest marketplace, and (b) federal law, which requires the truthful and balanced marketing of prescription drugs, 21 C.F.R. § 202.1(e).

24. These acts or practices were unfair because they unethically deprived prescribers of the information they needed to appropriately prescribe—or not prescribe—these dangerous drugs. Patients who use opioids can quickly become dependent and addicted, such that neither the patient nor the prescriber can avoid injury by simply stopping or choosing an alternate treatment.

25. Such actions constitute unfair acts and practices in commerce, in violation of 9 V.S.A. § 2453.

IV. REQUEST FOR RELIEF

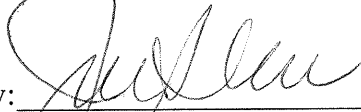
WHEREFORE, Plaintiff respectfully requests that this Court enter an Order:

- a. Adjudging and decreeing that Publicis has engaged in the acts or practices complained of herein, and that such constitute unfair acts or practices in violation of the Vermont Consumer Protection Act;
- b. Issuing a permanent injunction prohibiting Publicis, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair trade practices;
- c. That Publicis be required to disgorge all funds acquired and/or retained as a result of any acts or practices found to be unlawful;
- d. Imposing civil penalties of \$10,000 for each violation of the Vermont Consumer Protection Act;
- e. Awarding investigative and litigation costs and fees to the State of Vermont; and
- f. Such other and further relief as the Court may deem just and proper.

Dated: February 1, 2024

STATE OF VERMONT

CHARITY R. CLARK
ATTORNEY GENERAL

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