

STATE CONSUMER PROTECTION LAWS AND THEIR APPLICATION TO PRESCRIPTION DRUGS

**ALABAMA**

- Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1 *et seq.*
- Unclear application to prescription drug purchases.

Although no Alabama cases were found addressing this issue, the Northern District of New Jersey dismissed a plaintiff's fraud claim under the Alabama Deceptive Trade Practice Act based upon design, promotion, marketing, and labeling of a drug because plaintiff failed to allege with specificity the connection between defendants' conduct and the injury, did not specify how he was misled by advertisements, or identify what misstatements were made to his physician or relied upon in prescribing the drug to him. *See Cooper v. Bristol-Myers Squibb, Co.*, 2009 WL 5206130 (D.N.J. 2009).

**ALASKA**

- Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471 *et seq.*
- Applies to prescription drug purchases.

Section § 45.50.481(1) exempts transactions regulated under laws administered by an "officer acting under statutory authority of the state or of the United States."

Notwithstanding the foregoing, the Alaska Supreme Court has held that the plain language of the UTP applies to pharmaceutical transactions. *See Alaska v. Eli Lilly*, 2007 WL 5879398. Holding that "[w]hile the federal government under the FTC may have ceded its jurisdiction over certain pharmaceutical related matters to the Federal Drug Administration, the plain language of Alaska's UTP makes clear that Alaska has not done so. The plain language of the Alaska UTP specifically applies to prescription drug transactions by making a violation of [the Alaska Food, Drug, Cosmetic Act] an unfair or deceptive practice and that mere regulation by the FDA is insufficient to exempt the conduct complained by the State from coverage under the UTP where that conduct is not specifically prohibited by the FDA."

**ARIZONA**

- Arizona Consumer Fraud Act, Ariz. Rev. Stat. Ann. § 44-1521 *et seq.*
- Unclear application to prescription drug purchases.

Section 44-1523 expressly exempts "any advertisement which is subject to and complies with the rules and regulations of, and the statutes administered by the Federal Trade Commission." The Federal Trade Commission and the FDA share exclusive jurisdiction over regulation of drug marketing; the FDA is given primary authority to regulate prescription drugs.

**ARKANSAS**

- Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.*
- Does not apply to prescription drug purchases if manufacturer's actions at issue are consistent with FDA approved labeling.

Section 4-8-1-101 expressly exempts "[a]ctions or transactions permitted under laws administered by [...] other regulatory body or officer acting under statutory authority of [...] the United States, unless a director of these divisions specifically requests the Attorney General to implement the powers of this chapter."

The Arkansas Supreme Court upheld the dismissal of plaintiff's claims for false marketing practices under the ADTPA because the FDA

approved labeling of the drug supported defendant's marketing assertions and brought the actions within the ADTPA's statutory safe harbor. *See DePriest v. AstraZeneca Pharmaceuticals, L.P.* \_\_\_ S.W. 3d \_\_\_, 2009 Ark. 547 (Ark. 2009).

**CALIFORNIA**

- California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*; False Advertising Law, Cal. Bus. & Prof. Code § 17500; Unfair Competition Law, Cal. Bus. & Prof. Code § 17200.
- Does not apply to prescription drug purchases if manufacturer's actions at issue are subject to FDA regulation.

*See Perez v. Nidek Co. Ltd.*, 657 F. Supp. 2d 1156 (S.D. Cal. 2009). Dismissing consumer protection claims under CCLRA because they impermissibly sought private enforcement of the FDCA, but noting that not all claims that touch upon subject matter regulated by the FDCA are preempted (e.g., literally false or misleading statements made to promote drugs or devices are actionable if they do not depend on a determination by the court whether the FDCA has been violated). *See also, Peviani v. Hostess Brands, Inc.*, 750 F. Supp. 2d 1111 (C.D. Cal. 2010).

- Further limitations: *See In re Actimmune Mktg. Litig.*, 614 F. Supp. 2d 1037 (N.D. Cal. 2009). Granting a motion to dismiss where plaintiffs did not "allege what specific information the individual plaintiffs or their physicians had about the drug [and] the extent to which they relied upon that information."

**COLORADO**

- Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 *et seq.*
- Unclear application to prescription drug purchases.

Section 6-1-106 expressly excludes "[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency."

No case law interpreting this provision in context of FDA and prescription drugs.

To establish liability in private cause of action under the Act, the plaintiff must be able to show that the defendant's actions in violation of the CCPA caused the plaintiff's injury. *Hall v. Walter* 969 P.2d 224, (Co. 1998).

**CONNECTICUT**

- Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110 *et seq.*
- Unclear application to prescription drug purchases.

Section 42-110c expressly excludes "[t]ransactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States."

**DELAWARE**

- Delaware Consumer Fraud Act, Del. Code Ann. Tit. 6, § 2513.
- Does not apply to prescription drug purchases if manufacturer's actions at issue are consistent with FDA approved labeling.

Tit. 6 § 2513(b)(2) expressly exempts "any advertisement or merchandising practice which is subject to and complies with the rules and regulations of, and the statutes administered by, the Federal Trade Commission."

The FTC and the FDA share exclusive jurisdiction over regulation of drug marketing; the FDA is given primary authority to regulate

prescription drugs thus: “If the FDA labeling supports the statements made in advertising for an FDA-approved drug, the statements are not actionable under [the Delaware Act....] *Pennsylvania Employee Benefit Trust Fund v. Zeneca, Inc.*, 2005 WL 2993937, (D. Del. 2005)” (overruled on other grounds).

“[A]ny statements made that comply with the FDA-approved labeling would not be actionable under a state consumer fraud act because they are preempted by federal law.” *Id.*

#### DISTRICT OF COLUMBIA

- District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*
- Applies to prescription drug purchases.

However, such application may be limited.

An argument exists that a consumer may not sue a prescription drug manufacturer under the Act due to lack of consumer-merchant interaction. See *Williams v. Purdue Pharma Co.*, 297 F. Supp. 2d 171 (D.D.C. 2003). Declining to dismiss because brochures and videotapes directed at consumer-patients may have created a consumer-merchant relationship and noting that if companies had marketed to physicians and non-patients, it “might have been more difficult to discern a consumer-merchant relationship.”

Additionally, to have standing to bring a claim under the Act, the plaintiff must allege a “particularized and specific injury-in-fact suffered” by the plaintiff. *Id.* See *Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, (D.C. 1995). Holding that “the invasion of a purely legal right without harm to the consumer — in this case, to freedom from alleged false and misleading advertising — can be addressed through the administrative process of the Government of the District of Columbia.”

#### FLORIDA

- Florida Deceptive and Unfair Trade Practices Act, Fl. Stat. Ann. § 501.211 *et seq.*
- Does not apply to prescription drug purchases.

Section 501.212 provides that “[t]his part does not apply to [...] act or practice required or specifically permitted by federal or state law.”

The Florida District Court of Appeals upheld dismissal of FDUTPA claims against a pharmaceutical manufacturer on the three separate grounds:

- 1) The challenges fell within safe harbor provision of § 501.212 because the allegedly deceptive promotional and advertising activity was supported by the FDA approved labeling and was thus “specially permitted” by federal law;
- 2) Even if the safe harbor provision did not exist, the state law claims conflict with federal law and FDA approved labeling and are therefore preempted; and
- 3) Plaintiff failed to allege that the alleged wrong action caused her to purchase the prescription medication at issue. See *Probias v. AstraZeneca Pharmaceuticals, L.P.*, 958 So. 2d 1054 (Fl. Dist. Ct. App. 2007).

#### GEORGIA

- Fair Business Practices Act, Ga. Code Ann. § 10-1-390 *et seq.*
- Unclear but doubtful application to prescription drug purchases if manufacturer’s actions at issue are consistent with FDA approved labeling.

Section 10-1-391 provides that “[i]t is the intent of the General Assembly that this part be interpreted and construed consistently with interpretations given by the Federal Trade Commission in the federal courts pursuant to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)), as from time to time amended.”

Section 10-1-396 provides that “[a]ctions or transactions specifically authorized under laws administered by or rules and regulations promulgated by any regulatory agency of this state or the United States” are excluded from coverage.

See also, *Catlett v. Wyeth, Inc.* 379 F. Supp. 2d 1374 (M.D. Ga. 2004). Holding that Georgia courts would clearly find that the learned intermediary rule “encompasses any fraud, fraudulent concealment, misrepresentation, failure to warn, or breach of warranty claims related to the sale and use of prescription drugs” but no specific reference to the FBPA.

#### GUAM

- Deceptive Trade Practices — Consumer Protection Act, Guam Code Ann. Tit. 5, § 32102 *et seq.*
- Unclear but probable application to prescription drug purchases.

Section 32114 provides that “[n]othing in this chapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.A. 45(a)(1)). The provisions of this chapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.”

#### HAWAII

- Unfair and Deceptive Acts and Practices Act, Haw. Rev. Stat. § 480-2 *et seq.*
- Does not apply to prescription drug purchases at least to extent cause of action is based on personal injury and economic damages based thereon.

Section 480-3 provides that the Act shall be construed in accordance with judicial interpretations of similar federal antitrust statutes, except that lawsuits by indirect purchasers may be brought as provided in this chapter.

See *Blowers v. Eli Lilly & Co.*, 100 F. Supp. 2d 1265 (D. Hawaii 2000). Dismissing Deceptive Acts and Practices Act claims against drug manufacturer because Hawaii’s act only provides remedy for economic damage to property and/or business.

#### IDAHO

- Idaho Consumer Protection Act, Idaho Code Ann. § 48-603 *et seq.*
- Unclear application to prescription drug purchases.

Section 48-605 expressly exempts “[a]ctions or transactions permitted under laws administered by the state public utility commission or other regulatory body or officer acting under statutory authority of this state or the United States.”

#### ILLINOIS

- Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. § 505/1 *et seq.*
- Does not apply to prescription drug purchases if manufacturer’s actions at issue are consistent with FDA approved labeling.

Section 10b(1) expressly excludes “[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this state or the United States.”

“CFA will not impose higher disclosure requirements on parties other than those that are sufficient to satisfy federal regulations. If the parties are doing something specifically authorized by federal law, section 10b(1) will protect them from liability under the CFA. On the other hand, the CFA exemption is not available for statements that manage to be in technical compliance with federal regulations, but which are so misleading or deceptive in context that federal law itself might not regard them as adequate.” See *Bober v. Glaxo Wellcome PLC*, 246 F.3d 934 (7th Cir. 2001).

See also *S. Ill. Laborers’ & Employers Health & Welfare Fund v. Pfizer, Inc.*, 2009 WL 3151807 (S.D.N.Y. 2009). Dismissing complaint on the ground that plaintiffs failed to allege that physicians or third party payors relied on misrepresentations regarding medication’s efficacy.

#### INDIANA

- Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3 *et seq.*
- Unclear application to prescription drug purchases.

Section 24-5-0.5-6 expressly excludes “an act or practice that is [...] required or expressly permitted by federal law, rule, or regulation.”

The safe harbor provision has not been addressed in the context of prescription drugs, but it appears that the Indiana Court of Appeals may allow a somewhat liberal interpretation. See *Koeblinger v. State Lottery Com’n of Indiana*, 933 N.E. 2d 534 (Ind. Ct. App. 2010). Holding that because the state lottery “may promote and advertise the lottery,” the lottery’s website listing of remaining prizes in scratch-off games, which is a promotional or advertising tool designed to encourage purchases, was expressly permitted and therefore exempt under the Act’s safe harbor provision.

#### IOWA

- Iowa Consumer Fraud Act, Iowa Code Ann. § 714.16 *et seq.*; Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1 *et seq.*
- Unclear application to prescription drug purchases.

Section 714H.4 of the Private Act exempts “[c]onduct that is required or permitted by the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.”

Section 714H.4 of the Private Act also excludes facilities with a Iowa wholesale drug license. “Wholesaler” means “a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs or devices, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, distributed from, or offered for sale at wholesale in this state.” “Wholesaler” does not include those wholesalers “who sell only proprietary or over-the-counter medicines.”

Under the Private Act, consumers can recover actual damages but will not be able to recover claims for bodily injury or pain and suffering. Iowa Code Ann. § 714H.5.

#### KANSAS

- Kansas Consumer Protection Act, Kan. Stat. Ann. § 50-623 *et seq.*
- Applies to prescription drug purchases.

The exclusion of action under § 50-635 only extends to certain publishers and healthcare providers.

Application may be limited depending on claims asserted:

To state a cause of action under the Act, a consumer must allege a loss or injury resulting from a violation of the Act. A consumer who is neither aware of nor damaged by a violation of the Act does not have a claim under the Act. See *Porter v. Merck & Co., Inc.*, 2005 WL 3719630 (Kan. Dist. Ct. 2005). Dismissing claim under the Act, plaintiff had not claimed that she was injured by the medication or that the medication was ineffective for her.

The attorney general may bring an action against defendant if s/he believes that the citizens of Kansas have been aggrieved by defendant’s actions, even if no loss has been suffered. *Id.*

#### KENTUCKY

- Kentucky’s Unfair Trade Practices Act, Ky. Rev. Stat. Ann. § 367.170(1) *et seq.*
- Does not apply to prescription drug purchases.

Absent a distinguishable situation such as when a manufacturer provides an express warranty to the consumer, privity of contract exist between the parties in a suit alleging a violation of the Consumer Protection Act. See *Skilcraft Sheetmetal, Inc. v. Kentucky Machinery, Inc.*, 836 S.W.2d 907 (Ky. Ct. App. 1992). See also *Anderson v. Merck & Co. Inc.*, 417 F. Supp. 2d 842, 848 (E.D. Ky. 2006): No claim under Kentucky Consumer Protection Act against pharmaceutical sales representatives because representatives did not sell the medications directly to plaintiffs; *Hardy v. Royce Laboratories, Inc.*, 2000 WL 33960115 (W.D. Ky. 2000): Plaintiff conceded that consumer protection claim against manufacturer of prescription drug required contractual privity.

#### LOUISIANA

- Louisiana Unfair Trade Practices and Consumer Protection Act, La. Rev. Stat. Ann § 51:1401–1418.
- No cases found addressing application to prescription drug purchases.

#### MAINE

- Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. Tit. 10 § 1211–1216, and Maine Unfair Trade Practices Act, Tit. 5 § 207–213.
- Unclear but doubtful application to prescription drug cases.

Although no cases were found addressing this question, Tit. 10 § 1214 provides that the UDTPA does not apply to “[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.” Similarly, Tit. 5 § 208 provides that the UTPA does not apply to “[t]ransactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the state or of the United States.”

#### MARYLAND

- Maryland Consumer Protection Act, Md. Code Com. Law. § 13-301, *et seq.*
- No cases found addressing application to prescription drug purchases.

#### MASSACHUSETTS

- Massachusetts Consumer Protection Law, M.G.L.A. 93A § 21, 266 § 91, *et seq.*
- Applies to prescription drug purchases.

Even though Massachusetts has adopted the “learned intermediary” doctrine with only narrow exception, a patient can bring statutory consumer protection claims against a prescription drug manufacturer for inadequate warning to the *physician* which in turn caused the alleged harm to patient. See *Linnen v. A.H. Robins Co., Inc.*, No. Civ. A. 97-2307, 2000 WL 89379 (Mass. Super. 1999).

#### MICHIGAN

- Michigan Consumer Protection Act, M.C.L.A. § 445.901–922.
- Unclear but doubtful application to prescription drug cases.

Although no cases were found addressing this question, § 445.904 provides that the MCPA does not apply to “[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.”

Where sale of a medical device was specifically authorized by the FDA, the MCPA was held to be preempted. See *Peter v. Stryker Orthopaedics, Inc.*, 581 F.Supp.2d 813 (E.D. Mich. 2008).

#### MINNESOTA

- Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. Ann § 325D.43–48, Minnesota Consumer Fraud Act, Minn. Stat. Ann. § 325F.69, *et seq.*
- Unclear application to prescription drug purchases.

Section 325D.46 exempts “conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.”

Section 325E.784 regulates prescription drug discount vehicles but does not explicitly provide a cause of action for purchasers of prescription drugs.

In one case, where prescription drug manufacturer brought claim against a competitor under MCEA, claim was dismissed because manufacturer was “merchant,” not “consumer” for purposes of Act. *Solvay Pharma., Inc. v. Global Pharma.*, 298 F.Supp.2d 880 (D. Minn. 2004).

#### MISSISSIPPI

- Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*
- No cases found addressing application to prescription drug purchases.

#### MISSOURI

- Missouri Consumer Protection Act, Mo. Stat. Ann. § 407.010–130.
- Unclear application to prescription drug purchases.

Although the Missouri courts have not addressed prescription drugs specifically, “medical goods and services” meet the statutory definition of “merchandise” as defined in the Act. *Freeman Health System v. Wass*, 124 S.W.3d 504 (Mo. App. S.D. 2004).

#### MONTANA

- Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101–224.
- No cases found addressing application to prescription drug purchases.

#### NEBRASKA

- Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301–306.
- Unclear but doubtful application to prescription drug purchases.  
Per § 87-304, UDTPA does not apply to “[c]onduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.”

#### NEVADA

- Revised Uniform Deceptive Trade Practices Act, Nev. Rev. Stat. § 598.0903, *et seq.*
- Possible application to prescription drug purchases.  
Section 598.0925 defines “deceptive trade practice” to include “an assertion of scientific, clinical, or quantifiable fact in an advertisement which would cause a reasonable person to believe that the assertion is true, unless, at the time the assertion is made, the person making it has possession of factually objective scientific, clinical, or quantifiable evidence which substantiates the assertion.”

#### NEW HAMPSHIRE

- New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358A:2, *et seq.*
- No cases found addressing application to prescription drug purchases.

#### NEW JERSEY

- New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- Statute applies to prescription drug purchases (private cause of action is available).  
*See, e.g., McCarrell v. Hoffman-La Roche, Inc.*, 2009 WL 614484 (N.J. Super. A.D. 2009): Consumer fraud claim against prescription drug manufacturer; *Kleinman v. Merck & Co., Inc.*, 417 N.J. Super. 166, 8 A.3d 851 (N.J. Super. L. 2009): Denying class certification but not implying any exemption for prescription drug purchases.

*But cf. New Jersey Citizen Action v. Schering-Plough Corp.*, 367 N.J. Super. 8, 842 A.2d 174, 177–78 (N.J. Super. A.D. 2003). “While our Supreme Court has held that the learned intermediary doctrine will not shield the manufacturer from a duty to warn claim arising in the [direct to consumer] context, [...] nonetheless, the intervention by a physician in the decision-making process necessitated by his or her exercise of judgment whether or not to prescribe a particular medication protects consumers in ways respecting efficacy that are lacking in advertising campaigns for other products. In this context, that is, within a highly regulated industry in which the ultimate consumer is not in fact free to act on claims made in advertising in any event, the relationship between words used in the advertising and purchase of the product is at best an attenuated one.”

#### NEW MEXICO

- New Mexico Unfair Practices Act, N. M. Stat. Ann. 1978, § 57-12-1, *et seq.*
- Unclear application to prescription drug purchases.  
Section 57-12-7 exempts “actions or transactions expressly permitted under laws administered by a regulatory body of New Mexico or the United States.”  
*But see Santullo v. Pfizer, Inc.*, 2005 WL 4255513 (N.M. Dist. 2005) (unpublished). Denying class certification in consumer fraud action against prescription drug maker but not mentioning any restriction on cause of action under UPA.

#### NEW YORK

- Consumer Protection from Deceptive Acts and Practices, Gen. Bus. § 349–350-f.
- Probably extends to prescription drug purchases.  
Courts have suggested that § 349 may apply to prescription drug sales to the extent that a drug maker’s marketing efforts are directed at patients as opposed to, e.g., pharmacies. *See In re Rezulin Products Liability Litigation*, 390 F.Supp.2d 319, 337–38 (S.D.N.Y. 2005).

*See also In re Bayer Corp. Comb. Aspirin Prods. Marketing and Sales Prac. Litig.*, 701 F.Supp.2d 356, 379, n.17 (E.D.N.Y. 2010). Evaluating consumer fraud claim against prescription drug manufacturer under New Jersey law, but noting that New York’s consumer fraud statute is even broader than New Jersey’s.

#### NORTH CAROLINA

- North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1.1–29.
- No cases found addressing application to prescription drug purchases.

#### NORTH DAKOTA

- North Dakota Unfair Trade Practices Law, N.D.C.C. § 51-10-01, *et seq.*
- No cases found addressing application to prescription drug purchases.

#### OHIO

- Ohio Consumer Sales Practices Law, Ohio Rev. Code § 1345.01–13 and § 4165.01, *et seq.*
- Unclear but doubtful application to prescription drug purchases.  
Section 1345.12 exempts “[a]n act or practice required or specifically permitted by or under federal law, or by or under other sections of the [Ohio] Revised Code, except as” otherwise provided.

Section 4165.04 exempts “[c]onduct that is in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.”

#### OKLAHOMA

- Oklahoma Consumer Protection Act, 15 Okl.St. Ann. § 751–765.
- Unclear but doubtful application to prescription drug purchases.  
Section 754 exempts actions or transactions regulated by any “regulatory body or officer acting under statutory authority of this state or the United States.”

#### OREGON

- Oregon Unlawful Trade Practices Act, Or. Rev. Stat. § 646.605–656.
- Unclear but doubtful application to prescription drug purchases.  
Section 646.612 exempts “[c]onduct in compliance with the orders or rules of, or a statute administered by a federal, state, or local governmental agency.”

#### PENNSYLVANIA

- Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. § 201-1–9.
- Applies to purchases of prescription drugs.  
*Com. ex rel. Corbett v. Peoples Benefit Services, Inc.*, 895 A.2d 683 (Pa. Cmwlth. 2006). Suit brought under UTPCPL against company that sold discount prescription drugs, medical and dental cards, and related services to senior citizens. *See also Com. ex rel. Corbett v. Peoples Benefit Services, Inc.*, 923 A.2d 1230 (Pa. Cmwlth. 2007).

*Com. ex rel. Pappert v. TAP Pharmaceutical Products, Inc.*, 885 A.2d 1127, 1142–43 (Pa. Cmwlth. 2005). Holding that the state can bring private action against prescription drug companies under UTPCPL.

#### RHODE ISLAND

- Rhode Island Unfair Trade Practice and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1 to 12.

- Unclear but doubtful application to prescription drug purchases. Section 6-13.1-4 exempts “actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state or the United States.”

#### SOUTH CAROLINA

- South Carolina Unfair Trade Practice Act, S.C. Stat. Ann. § 39-5-10, *et seq.*
- Unclear but doubtful application to prescription drug purchases. Section 39-5-40 exempts “[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this state or the United States or actions or transactions permitted by any other South Carolina State law.”

#### SOUTH DAKOTA

- South Dakota Deceptive Trade Practices and Consumer Protection Act, S.D.C.L. § 37-24-1, *et seq.*
- Unclear but doubtful application to prescription drug purchases. Section 37-24-6(12) regulates prescription drug discount vehicles but does not explicitly provide a cause of action for purchasers of prescription drugs. Section 37-24-10 exempts all “acts or practices permitted under laws of this state or the United States or under rules, regulations, or decisions interpreting such laws.”

#### TENNESSEE

- Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*
- Unclear but doubtful application to prescription drug purchases. Section 47-18-111 exempts “[a]cts or transactions required or specifically authorized under the laws administered by, or rules and regulations promulgated by, any regulatory bodies or officers acting under the authority of this state or of the United States.”

#### TEXAS

- Texas Deceptive Trade Practices Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41–505.
- Does not apply to prescription drug purchases. See *In re Norplant Contraceptive Products Litigation*, 165 F.3d 374, 377–78 (5th Cir. 1999). Holding that Texas’s “learned intermediary” doctrine precludes liability of prescription drug manufacturer under the DTPA. Section 17.46(18) regulates prescription drug discount vehicles but does not provide a cause of action for purchasers of prescription drugs.

#### UTAH

- Utah Deceptive Trade Practices Consumer Protection Act, § 13-11a-1, *et seq.*
- Unclear but doubtful application to prescription drug purchases. Section 13-11a-5 exempts “conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.”

#### VERMONT

- Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9 § 2453, *et seq.*
- Applies to prescription drug purchases by explicit statutory provision. Section 2466a(c) (a part of the Vermont Prescription Confidentiality Law) provides as follows: “It shall be a prohibited practice under section 2453 of this title for a manufacturer of prescription drugs to present or cause to be presented in the state a regulated advertisement if that advertisement does not comply with the requirements concerning drugs and devices and prescription drug advertising in federal law and regulations under 21 United States Code, Sections 331 and 352(n) and 21 Code of Federal Regulations, Part 202.” Statute has been upheld against challenge that it is facially preempted by federal law, notwithstanding pharmaceutical manufacturers’ speculation that

Vermont would create a different, potentially broader, reading of federal drug advertising law that would conflict with federal regulation. *IMS Health Inc. v. Sorrell*, 631 F.Supp.2d 434 (D. Vt. 2009), *rev’d on other grounds*, 630 F.3d 263 (2d Cir. 2010), *aff’d*, 131 S.Ct. 2653 (2011).

#### VIRGINIA

- Virginia Consumer Protection Act of 1977, Va. Code Ann. § 59.1-196, *et seq.*
- Does not apply to prescription drug purchases. Section 59.1-199 excludes “[a]ny aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.” Virginia courts have held that a prescription medical device regulated by the FDA is exempt from the CPA under § 59.1-199, and the state has approved the “learned intermediary” doctrine with respect to prescription drugs. See *Hart v. Savage*, 2006 WL 3021110, at \*1–2 (Va. Cir. Ct. 2006).

#### WASHINGTON

- Washington Consumer Protection Act, Rev. Code Wash. § 19.86, *et seq.*
- Applies to prescription drug purchases, both for physicians and others. Under Washington’s learned intermediary doctrine, a physician has standing to pursue a CPA claim against a prescription drug maker. *Washington State Physicians Ins. Exchange & Ass’n v. Fisons Corp.*, 122 Wash.2d 299, 858 P.2d 1054 (Wash. 1993).

*Fisons* left some question whether patients would have standing under the CPA to bring a private cause of action. See *id.* at 313: “Under the learned intermediary doctrine, a drug company fulfills its duty by giving warnings regarding prescription drugs to the physician rather than to the patient.”

*In Panag v. Farmers Ins. Co. of Washington*, 166 Wash.2d 27, 204 P.3d 885 (Wash. 2009), the Washington Supreme Court clarified that there is no “relationship” test. The Court held that “a private CPA action may be brought by one who is not in a consumer or other business relationship with the actor against whom the suit is brought.” *Id.* at 43–44.

#### WISCONSIN

- Wisconsin Consumer Act, Wis. Stat. Ann. § 421–427.
- No cases found addressing application to prescription drug purchases.

#### WYOMING

- Wyoming Consumer Protection Act, Wyo. Stat. Ann. § 40-12-101–114.
- Unclear but doubtful application to prescription drug purchases. Section 40-12-110 exempts “[a]cts or practices required or permitted by state or federal law, rule or regulation or judicial or administrative decision.”

#### WEST VIRGINIA

- West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*
- Does not apply to prescription drug purchases. The private cause of action created by the West Virginia Consumer Credit and Protection Act does not extend to prescription drug purchases. The consumer cannot and does not decide what product to purchase; therefore, no causal connection can be established. See *White, et al. v. Wyeth, et al.*, 705 S.E. 2d 828 (W. Va 2010).

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