

PUTT CALLS ON ILLINOIS SUPREME COURT TO FIND OPTUMRX CONTRACTS "UNCONSCIONABLE" FOLLOWING NEW WISCONSIN COURT RULING

Previous Illinois Appellate Court Ruling Would Harm Patients and Their Pharmacies Under "Unreasonable and Unconstitutional" Terms of Forced Arbitration

WINSTON-SALEM, NC, UNITED STATES, July 5, 2023 /EINPresswire.com/ -- Pharmacists United for Truth and Transparency ([PUTT](#)) today applauded Wisconsin Circuit Court, Branch II, for joining the California Court of Appeals in calling the forced arbitration clause of the form contract between [OptumRx](#), the pharmacy benefit manager for UnitedHealth Group, and independent pharmacies "unconscionable".

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“We are greatly encouraged by the Circuit Court’s ruling, which reflects a depth of understanding of the degree to which OptumRx makes arbitration so expensive and cumbersome that it prevents small business pharmacies

from bringing ‘objectively meritorious’ claims,” said PUTT Executive Director Monique Whitney. “There can be no fair dealing between two parties to a contract when one party makes the rules so one-sided in its favor that the other party has no chance to prevail. We applaud the Wisconsin Circuit Court and ask the Illinois Supreme Court to follow the precedents set by the California and Wisconsin Courts.”

The California Appellate court decision described in detail how OptumRx’s contracts meet the legal definition of “unconscionability” in which a contract may be written in such a way as to greatly favor one party over another. OptumRx’s ability to unilaterally change arbitration terms while pushing arbitration costs - which can exceed \$250,000 per arbitration event - onto the pharmacies were among the many reasons the Court ruled OptumRx’s forced arbitration as “unconscionable”.

In May, the Illinois Appellate Court reversed a similar order by the trial court and ordered the plaintiff and other 42 pharmacies to bring separate arbitrations, requiring the pharmacies to

travel to California to arbitrate and pay at least \$60,000 in arbitration fees per arbitration. Attorneys representing Illinois independent pharmacies are now seeking to have the case heard in the state's Supreme Court.

"The Wisconsin Circuit Court found that, by constantly changing the arbitration clause to suit its own purposes, OptumRx was not dealing in good faith. The Circuit Court recognized that, by controlling access to 20% of pharmacy customers, Optum has absolute power to impose whatever terms it wants, to change those terms at will, and to impose terms that make it impossible for pharmacies to benefit from arbitration." said Mark Cuker, attorney at [Jacobs Law Group](#), who is representing both the Wisconsin and Illinois pharmacies against OptumRx.

In its ruling of OptumRx's practices, the Circuit Court stated:

"Optum gets to decide the terms of an arbitration agreement even when they have agreed there will not be one, decides when and if it will change those terms, changes those terms without advance notice or negotiation, implements those terms for several months before it affirmatively notifies the pharmacies that substantial, unfavorable changes in the arbitration provisions are being implemented. ...When the Court considers the cost of the arbitration (three arbitrators, ten years of experience, limited discovery, etc.) the Court can only conclude that in all but the most substantial disputes the cost of proceeding to arbitration will substantially outweigh any benefit that could be achieved in arbitration and that this will undoubtedly have a substantial chilling effect upon pharmacies presenting objectively meritorious positions. 'You can't fight City Hall so why try' appears to be the result that this scheme creates. This is the product of a one sided agreement foisted upon pharmacies who need to make a deal with Optum or have a substantial part of a market closed to them and this is fundamentally unfair." (emphasis added)

Cuker and fellow attorney Keith Short have asked the Supreme Court of Illinois to take the Illinois case and decide that, as courts found in California and Wisconsin, OptumRx's forced arbitration terms are unconscionable and will harm independent pharmacies providing patient care in Illinois.

"We are confident the Illinois Supreme Court will consider the rights of all parties involved and will come to the proper decision," Cuker said. "At the end of the day, this case is about the rights of small businesses who must daily go up against the corporate Goliaths. The stakes couldn't be higher - small business pharmacies and their patients need a level playing field against Fortune 10 health corporations. If OptumRx gets its way, the days of independent pharmacies could be numbered."

The Wisconsin case is OptumRx, Inc. v. Marinette-Menominee Prescription Center, LTD, et al. Case No.: 22-CV-68, State of Wisconsin, Circuit Court Branch II, Marinette County. The California case is Platt, LLC et al v OptumRx, Inc., case number A163061, California Court of Appeal, First Appellate District. The Illinois case is Copper Bend Pharmacy, Inc. et al v. OptumRx, Inc., case number 5-22-0211, Appellate Court of Illinois, Fifth District.

For more information about Mark Cuker or Jacobs Law Group , see [JacobsLawPC.com](https://www.jacobsLawPC.com). For more information on how PBM practices obstruct patient care while driving up costs to consumers and end payers, visit PUTT's website at [TruthRx.org](https://www.TruthRx.org).

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