

# Records show Publix opioid sales grew even as addiction crisis prompted other chains' pullback

February 1 2024, by Ian Hodgson, Tampa Bay Times, Christopher O'Donnell, Tampa Bay Times, KFF Health News

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An executive at Teva Pharmaceuticals flagged Publix Super Markets in

October 2015 after detecting what he called in an email "serious red flags" with the grocery chain's orders of powerful opioids.

The share of high-strength oxycodone orders was well above normal for a chain of grocery store pharmacies, and the total number of pills sent to Publix stores was "significantly above their peers," Teva's head of federal compliance wrote in the email to his supervisors, according to court records in a [federal lawsuit](#) pending in Ohio against Publix and other companies.

"This is high-strength oxycodone ultimately going to Florida, a well-established hot spot for oxycodone abuse in the U.S.," wrote the compliance officer, Joseph Tomkiewicz, in the email explaining why he halted Teva-manufactured prescription opioids to Florida's Publix pharmacies.

The volume of prescription opioids dispensed in Florida fell 56% from 2011 to 2019 as the pharmaceutical industry was hit by lawsuits for its role in the national opioid crisis, according to a Tampa Bay Times analysis of Drug Enforcement Administration data recently released by a federal court. But while national pharmacy chains like CVS and Walgreens were dispensing fewer of the highly addictive drugs, Publix's sales were soaring.

The Lakeland-based grocer's sales of oxycodone climbed from 26 million pills per year in 2011 to 43.5 million in 2019, the data shows. The increase in sales, which far outpaced the chain's addition of stores in Florida, saw its market share rise to 14%, enough to overtake CVS to become Florida's second-largest dispenser of all [opioid medications](#), behind only Walgreens, which dispensed 28% of opioids in the state in 2019.

The analysis excludes drugs like methadone prescribed for addiction

treatment. Opioid sales at Publix dipped slightly in 2018 and 2019, the last two years of available data.

Even as its market share grew, however, Publix was not among the 15 national manufacturers, distributors, and pharmacies that Florida sued in 2018. That lawsuit claimed other pharmacies had flooded America with painkillers such as OxyContin, fueling debilitating addictions that strained communities' first responders and medical providers.

The state's lawsuit was a boon for Florida. While admitting to no wrongdoing, the companies agreed to settlement payments to the state, including \$177 million from Teva, \$440 million from CVS, and \$620 million from Walgreens. The state didn't sue Walmart but in 2022 negotiated a \$215 million settlement from the retail giant, which also denied any wrongdoing.

However, there is no mention of Publix's role on a state webpage touting the 10 opioid settlements reached during Ashley Moody's tenure as attorney general.

That's despite Publix being the third-biggest dispenser of opioids in the state, selling nearly twice the amount of the drugs as Walmart from 2006 to 2012, according to earlier DEA data made public in July 2019, more than two years before Florida prosecutors reached settlements with other pharmacy chains.

Moody, a Republican, took over as the state's top legal official in January 2019. Her office declined to specifically address why Florida has not included Publix in any of its legal actions over opioids.

"We are proud of the more than \$3 billion recovered through the historic opioid litigation, and since the filing of the amended complaint, the Department of Legal Affairs has and will continue to take action when

merited by the evidence—as we did in the more recent actions with Walmart and McKinsey," said Moody's communications director, Kylie Mason, in an email.

The grocery chain made \$10.6 million in [political donations](#) in Florida from 2016 to 2022 when the state was preparing and pursuing its litigation, state election data shows. Most of the donations were for Republican committees and candidates, including \$125,000 donated to the Friends of Ashley Moody political action committee.

In Florida, Walgreens made \$637,000 in political donations, including \$8,000 to Moody, over the same period. CVS made \$208,500 in donations, none of which went to Moody.

Other local communities in Florida and beyond did sue Publix. The federal suit naming Publix that prompted the release of the federal data was filed by Georgia's Cobb County. It has been earmarked as a test case for dozens of other lawsuits brought by cities and counties in the Southeast. Those include more than 20 Florida communities, among them St. Petersburg and Pinellas and Pasco counties.

While Walgreens and other national companies paid billions to settle their lawsuits and agreed to stricter drug controls, Publix is still contesting the cases.

Those communities claim that the grocery chain failed to operate an "effective suspicious ordering monitoring program" and that when Publix did limit orders to its own pharmacies, those pharmacies could bypass the check by going to a third-party distributor such as AmerisourceBergen.

Publix also should have known that its pharmacies in Georgia, Florida, Alabama, Tennessee, and South Carolina, were filling multiple

prescriptions written for the same patient by the same doctor or by multiple doctors, the federal lawsuit alleges.

As part of the national opioid settlement, other pharmacy chains were required to be more compliant with laws regulating opioids, including checks on suspicious orders and prescriptions from "blocked and potentially problematic" doctors.

"It's a heck of a lot cheaper to distribute and dispense controlled substances without all these checks," said Jayne Conroy, an attorney with New York law firm Simmons Hanly Conroy who is representing the Florida communities and has served as co-lead counsel in the national opioid litigation that has secured more than \$50 billion in settlements and verdicts.

Publix did not respond to three emails and three phone calls to its communications office seeking comment.

In its responses to the lawsuits, it has repeatedly denied allegations of wrongdoing.

In seeking to get the Ohio case dismissed, Publix attorneys argued that it can't be considered "a public nuisance" to legally distribute and dispense opioids. The judge in the case denied the company's motion and another legal brief that sought to prevent the release of the more recent DEA data.

In November 2022, Publix sued more than a dozen of its insurers in federal court in Tampa, claiming they had not honored policies that would protect it from opioid litigation claims.

It also countersued Cobb County in 2023, saying the Georgia community's lawsuit was "motivated by promises of a windfall." The

case is still pending.

"Publix takes great pride in its relationship with its valued customers and the communities it serves," that lawsuit states. "These novel and unprecedented claims are baseless, false, and belied by Publix's decades of service."

DEA officials declined to comment on Publix's opioid record. No enforcement actions against Publix are listed in the federal registry.

## **A growing player**

Since its 1930 start as a food store in Winter Haven, Florida, Publix has grown into a massive company with more than 250,000 employees and nearly 900 stores in Florida alone. Revered for its free cookies for kids, chicken tender subs, fresh produce, birthday cakes, and BOGO deals, the grocery chain has become one-stop shopping for customers.

And, increasingly, "Where Shopping Is a Pleasure"—Publix's slogan since 1954—includes powerful prescription drugs.

Publix was a smaller player in Florida's opioid market before 2011, responsible for fewer than 5% of all opioid medications distributed to pharmacies across the state, according to the Times analysis of federal opioid data.

That year marked a turning point for opioid sales in Florida. As the scale of the opioid epidemic came to public attention, and litigation followed, most chain pharmacies began to back off their orders for pills, the data shows.

Many companies ultimately agreed to pay billions of dollars to settle lawsuits filed across the country by state and local governments. That

included a \$683 million settlement between Florida and Walgreens in May stating the pharmacy, which denied any wrongdoing, must pay for community treatment, education, and prevention programs, plus litigation costs.

In addition to hefty payouts, some settlement agreements required companies to adopt stricter controls to bring operations into fuller compliance with the Controlled Substances Act, a federal law that governs the manufacture, distribution, and use of drugs considered to have a high risk of being abused.

Distributors were required to adopt automated software that would flag suspicious orders from pharmacies such as quantities well above a store's average. Pharmacy companies were required to conduct checks on doctors to ensure the prescribers are registered with the Drug Enforcement Administration.

Those measures and others put the brakes on opioid distribution nationwide. Meanwhile, the distribution in Florida's Publix stores went in the opposite direction: From 2011 to 2019, the grocery chain increased its dispensing of all opioid medication by 35%, according to the Times' analysis of the data.

That growth far exceeded any increase in sales that would correspond to the grocer's net addition of 146 pharmacies from 2011 to 2019.

As Publix's distribution increased, so too did the number of orders that should have been flagged as suspicious, according to plaintiffs in multiple lawsuits. Drug distributor McKesson instructed its employees to investigate any pharmacy ordering more than 8,000 oxycodone pills in a single month as part of the company's "Lifestyle Drug Monitoring Program," according to 2018 congressional testimony.

Publix pharmacies' orders surpassed that threshold almost 1,500 times in 2019, the Times analysis found, more than triple the number in 2011. The benchmark has been repeatedly used in opioid litigation as evidence of inadequate monitoring of drug distribution.

## **'Red flags' missed**

As Tomkiewicz faced pressure from Teva management to fulfill Publix's orders, he mined the data to back up his concerns, court records show. During a heated phone call, one Teva executive stressed that Publix was an increasingly important player in the opioid distribution market, Tomkiewicz said at his deposition, and an important client for the world's largest generic drug manufacturer.

Tomkiewicz requested data from Publix's 10 largest pharmacies by opioid sales, all located in Florida.

By law, Publix was required to keep tabs on the physicians whose prescriptions it filled. But it took Tomkiewicz just one day of searching the internet to find problems, according to time stamps on emails submitted in the court records.

Among the top prescribers at two Publix locations in Melbourne was Thomas Velleff, according to Tomkiewicz's email. Public records and a newspaper report showed "significant anecdotal evidence of pill mill activity," Tomkiewicz wrote. He said he found a 2010 article in the Treasure Coast Palm, in which a city employee claimed Velleff's prior pain clinic in Palm City attracted "carloads" of patients, often with out-of-state license plates.

Complaints filed with the state Department of Health dating to 2010 allege that Velleff overprescribed opioids and failed to monitor his patients' usage for signs of abuse. One 2017 complaint alleges that



Velleff pressured one patient into loaning him money.

The state Board of Medicine revoked Velleff's medical license in December 2020. Velleff did not appear at his medical board hearing, according to the final order revoking his license. He did not respond to emails seeking comment.

A top prescriber at one Ocala store had been disciplined in 2011 for injecting herself with a sedative while leaving an anesthetized patient unsupervised. Other pharmacies repeatedly filled prescriptions from "cash-only" pain clinics or written by physicians located hundreds of miles away with no license to practice in Florida, Tomkiewicz wrote in the email. It is legal to do so, but drug diversion experts consider out-of-state prescriptions a red flag that should prompt additional checks for possible drug abuse.

Tomkiewicz had amassed a list of nine doctors among Publix's top prescribers who made him wonder: "Why the hell do they still have a license and are still registered with the DEA?" according to his deposition.

Tomkiewicz also said in his deposition he was troubled by not just the volume of opioids Publix was selling, but that they were handing out a disproportionate share of 30-milligram instant-release oxycodone pills—another red flag for abuse. In an email to Teva's director of compliance, he compared that with the Moffitt Cancer Center in Tampa, where cancer patients were mostly being prescribed 5 mg instant-release pills, [court records](#) show.

As the strongest dose on the market, the 30 mg pills have limited use in retail pharmacies and are highly sought-after among abusers, Tomkiewicz wrote in the email. Stronger doses of oxycodone are available, but only in long-release capsules such as OxyContin, according

to the U.S. National Institutes of Health.

Publix sold 4.8 million of the highly addictive high-dose pills in 2019—roughly 1 in 10 of all oxycodone pills dispensed by the pharmacy chain that year, according to the Times analysis of the federal data.

Eventually, Tomkiewicz relented, he said in his deposition. As long as Publix promised not to send Teva products to nine locations that he'd picked out, he would let the shipment go ahead. Teva did not notify federal authorities, according to his deposition.

A Times review of court documents found no written record indicating that Publix responded to Tomkiewicz's concerns at the time. An expert report submitted in the lawsuit came to the same conclusion.

## **Methodology**

For comparison and dosing purposes, it is standard practice to convert opioid medications to an equivalent dose of morphine. Every shipment of opioids in the federal database is reported as both the number of pills and its morphine milligram equivalent, or "MME."

This story uses that standard to calculate increases in the number of pills dispensed and compare the volume of pills prescribed by different pharmacy chains.

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Citation: Records show Publix opioid sales grew even as addiction crisis prompted other chains' pullback (2024, February 1) retrieved 28 April 2024 from <https://medicalxpress.com/news/2024-02-publix-opioid-sales-grew-addiction.html>

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