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BRIAN R. MARTINOTTI, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 296
MASTER DOCKET NO.:BER-L-936-13

IN RE Stryker Rejuvenate & ABG II

Modular Hip Stem LITIGATION

CIVIL ACTION

DEPOSITION GUIDELINES FOR PLAINTIFFS WHO ARE IN EXTREMIS

I. SCOPE OF THE ORDER

Pursuant to the agreement of Counsel for Plaintiffs and Defendant, these Guidelines shall apply to all actions currently pending in the In Re Stryker Rejuvenate Hip Stem and ABGII Modular Hip Stem Litiation, Case No. 296, and all future actions transferred or directly filed therein. These Guidelines are intended to address the need to preserve testimony involving witnesses who are "in extremis" in specific plaintiffs' cases which have not been selected for mediation, bellwether or advanced discovery. Rules governing cases selected for mediation, advanced discovery or bellwether trials will be addressed by the Court at a later date.

II. DEPOSITIONS OF PLAINTIFFS WHO ARE *IN EXTREMIS*

Except by leave of Court for good cause shown, a Plaintiff may only notice his or her deposition for the purposes of preserving testimony for trial upon a showing of the following conditions:

1. Plaintiff will provide Defendant with a certification or affidavit from his or her physician stating that Plaintiff is hospitalized, terminally ill or in hospice care due

to his or her medical condition and is unlikely to recover sufficiently to provide testimony at a later date;

2. Plaintiff will provide Defendant with Plaintiff's medical and pharmacy records, including Plaintiff's treating orthopedist's records, primary care records, hospital and surgery records, and implant and explant records;

3. Plaintiff will provide Defendant with a written description of the steps that Plaintiff has taken to obtain medical and pharmacy records that he or she was unable to provide in accordance with Paragraph II(2), and, to the extent applicable, will provide a "No Records Statement" for those providers who have advised Plaintiff that his or her records do not exist. This provision does not obviate Plaintiff's obligation to undertake his or her best efforts to secure the records identified in Paragraph II(2) in a timely fashion;

4. Separate and apart from Plaintiff's obligation to provide medical records in accordance with Paragraphs II(2) and (3) above, Plaintiff will also provide Defendant with a completed Preliminary Disclosure Form and Plaintiff Fact Sheet, including HIPAA-compliant medical authorizations for the release of records from all of Plaintiff's healthcare providers, surgeons, facilities and pharmacies (whether or not Plaintiff has provided such records to Defendant) no later than 45 days in advance of the deposition to permit Defendant to obtain any records that Plaintiff has not furnished.

5. The discovery deposition of Plaintiff shall be scheduled no sooner than 45 days from the date Plaintiff provides all necessary medical records, discovery responses (including the completed Preliminary Disclosure Form and Plaintiff Fact Sheet) and HIPAA-compliant authorizations in compliance with Paragraphs II(1) through (4) above.

6. If Defendant determines at the conclusion of the discovery deposition that no additional investigation is required, the trial preservation deposition will begin no sooner than seven (7) business days after the completion of the discovery deposition, unless otherwise agreed or ordered. If Plaintiff reveals information likely to lead to the discovery of admissible evidence during the discovery deposition, the trial preservation deposition shall be conducted as soon as practicable after the completion of Defendant's investigation of same; and

7. The parties will confer with one another to select mutually agreeable dates for the discovery and trial preservation depositions in accordance with Paragraph II(5) and (6) above.

III. DEPOSITIONS OF NON-PARTY WITNESSES WHO ARE *IN EXTREMIS*

With regard to individual cases that have central non-party testimony of a witness who is *in extremis*, except by leave of Court for good cause shown, a party may only notice the deposition of a non-party witness to a plaintiff-specific claim for purposes of preserving testimony for trial upon a showing of the following conditions:

1. The party will provide counsel for the opposing party written notice as to the identity of the non-party witness to be deposed, including a detailed description of the scope and subject matter of the testimony expected to be provided by the non-party witness, in order to determine whether the non-party testimony is considered central to the matter, requiring testimony to be preserved for trial. If the parties do not agree on the need for the noticed testimony, the party wishing to notice the deposition must make a formal application to the Court in order to proceed. If the parties agree or the Court

permits the noticing party to proceed then the noticing party must comply with Paragraphs (III)(2) through (6) below.

2. The party will provide counsel for the opposing party with a certification or affidavit from the non-party witness' physician stating that the witness is hospitalized, terminally ill or in hospice care due to his or her medical condition and is unlikely to recover sufficiently to provide testimony at a later date;

3. If any documents may be used in the deposition then the noticing party must provide copies of those documents to all parties;

4. The discovery deposition of the non-party witness shall be scheduled no sooner than 45 days from the date the party has complied with Paragraphs III(1) through (3) above.

5. If the opposing party determines at the conclusion of the discovery deposition that no additional investigation is required, the trial preservation deposition will begin no sooner than seven (7) business days after the completion of the discovery depositions, unless otherwise agreed or ordered. If the non-party witness reveals information likely to lead to the discovery of admissible evidence during the discovery deposition, the trial preservation deposition shall be conducted as soon as practicable after the completion of the opposing party's investigation of same;

6. The parties will confer with one another to select mutually agreeable dates for the discovery and trial preservation depositions in accordance with Paragraphs III(4) and (5) above.

7. In the event the witness becomes too ill or expires after the discovery deposition but before the opposing party chooses to conduct the trial preservation

deposition, the admissibility of the discovery deposition shall be determined by the Court in accordance with the New Jersey Rules of Court.

8. These Guidelines shall not preclude any party from applying for leave to modify any of the terms set forth herein on a case by case basis.

IT IS SO ORDERED

Dated: 17 July 2013

Hon. Brian R. Martinotti, J.S.C.