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JOHN C. PORTO, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY
MASTER CASE NO. ATL-L-794-19

CASE NO. 630

Civil Action

IN RE PROCEED MESH LITIGATION
(Proceed® Surgical Mesh and Proceed® Ventral Patch Hernia Mesh)

CASE MANAGEMENT ORDER NO. 11 (DEPOSITIONS)

This matter having been opened to The Court by the parties; and the parties having indicated they have no objection to the form and entry of the within Order; and good cause appearing;

IT IS on this 11th day of February, 2020,

ORDERED:

I. APPLICABILITY; STIPULATIONS

A. Applicability

This Order applies to all depositions in In Re Proceed Mesh Litigation, Case No. 630 ("Proceed Mesh MCL, No. 630"), except for expert witness depositions, which will be addressed by a separate Order. As used in this Order, "Proceed mesh" shall include the "Proceed Ventral Patch" product.

B. Stipulations

The parties (and when appropriate, a nonparty witness) may by agreement alter, amend, or modify any practice relating to noticing or conducting of a deposition, including, but not limited to the provisions in this Order.

II. WITNESS IDENTIFICATION, SCHEDULING AND TIMING

A. Good-Faith Cooperation

Counsel shall endeavor in good faith to agree upon the depositions to be taken and the scheduling of those depositions, taking into account (a) the need to preserve relevant testimony; (b) the overall discovery schedule established by the Court; (c) all applicable Rules Governing the Courts of the State of New Jersey; and (d) the logistics of document productions necessary for the depositions. Counsel shall cooperate in good faith to avoid unnecessary conflicts or imposing unreasonable travel demands or timing difficulties. Regarding witnesses who are a party and/or are an agent or employee of a party, Counsel should be reasonably responsive to requests for depositions and should not unnecessarily delay scheduling a deposition once requested by opposing counsel.

B. Identification of Company Fact and Rule 4:14-2(c) Depositions

1. On or before March 9, 2020, Defendant shall serve a list of current and former company employees whose job duties or responsibilities included the following:
    a. the sale of Proceed Mesh or the training or education of sales personnel relative to Proceed Mesh;
    b. the marketing, physician education and/or physician training relative to Proceed Mesh;
    c. the design of Proceed Mesh;
    d. the testing of Proceed Mesh for safety and efficacy; and
    e. analysis, investigation or handling of adverse event complaints (post-marketing surveillance).
2. Before scheduling depositions, the parties shall meet and confer in a good faith effort to address the following issues:

a. objections, if any;

b. whether the document collection for any of the custodians on the list warrants supplementation in advance of a deposition;

c. whether the Plaintiffs' Executive Committee (PEC) will be seeking documents other than a custodial file with respect to a particular witness, and the timing of such requests in relation to production;

d. the timing and order of depositions; and

e. the method and recipient of service for former company employees.

3. To the extent the parties do not come to agreement on one or more of the issues set forth in paragraphs II.B.2.a-f above, the issue(s) shall be presented to the Court for resolution.

4. Defendants assert that it will take approximately 45 days from the date the PEC issues the notice of deposition to produce or supplement a custodial file (depending on the number of custodians and volume of responsive materials) and that additional time may be required to the extent that the PEC seeks documents beyond custodial files for a witness or in connection with a Rule 4:14-2(c) deposition. Defendants will endeavor to produce the custodial file/supplemental custodial file before the expiration of 45 days. Defendants shall promptly notify the PEC if they are unable to produce (or supplement) the custodial file within 45 days of the deposition being noticed and shall offer two alternative dates for deposition within a reasonable time of the expected production. If the parties cannot agree on the time for production, the parties will bring the issue to the Court for resolution.

5. Requests for additional company witnesses or Rule 4:14-2(c) depositions shall be

handled consistent with the principles set forth in this Section (Section II).

III. NOTICES; SUBPOENAS

A. Notices

1. All depositions will be noticed and conducted pursuant to New Jersey Court Rules and the terms of this Order.

2. All initial notices of deposition or subpoenas shall be served at least 30 days before the scheduled deposition, to the extent practicable.[1] To the extent documents are sought from Defendants in a notice or subpoena that have not already been discussed and agreed-upon by the parties in connection with the protocol in Section II above, such requests shall be made at least 45 days in advance of the date by which the PEC seeks the production of documents to allow for collection and production and/or resolution of objections, if any. Defendants will provide their written responses and objections to such document requests within 7 days.

3. Defendants will produce documents agreed upon for production (or ordered by the Court if no agreement is reached) no later than 20 days in advance of a deposition. To the extent that Defendants determine that they will be unable to produce documents 20 days in advance, Defendants shall promptly advise the PEC and shall provide two alternative dates for the deposition within a reasonable time after the expected date of production.

B. Third-Party Subpoenas

1. Third-party witnesses subpoenaed to produce documents shall be served with a subpoena *duces tecum* in accordance with the New Jersey Court Rules.

[1] This excludes amended notices of depositions and subpoenas to appear based on amended notices.

2. The parties recognize that documents responsive to third-party subpoenas may contain confidential and/or proprietary information as defined in CMO 3 (MCL 630 Protective Order). To the extent applicable, the parties agree to comply with the provisions of CMO 3.

3. Upon receipt of documents responsive to any third-party subpoena, counsel for Plaintiffs shall transmit one copy of the received documents to counsel for Defendants as soon as practicable. Defendants shall have 20 days from the receipt of the documents to make their confidentiality designations. Once the designation process has been completed, 20, counsel for Defendants shall transmit to the PEC a set of the documents with unique bates numbers (but also including the original bates numbers, if any) and the appropriate confidentiality designations in conformance with the provisions set forth in CMO 3. Those documents specifically designated as confidential by Defendants shall be governed in all respects by CMO 3.

4. Any documents received in response to any third-party subpoenas shall be immediately treated as confidential under CMO 3 and remain so for a period of 30 days from Defendants' receipt of the documents. During that time period, the documents may be used in accordance with the provisions of CMO 3. Plaintiffs shall endeavor to use documents with the unique bates number assigned by Defendants within a reasonable time of such assignment. However, nothing in this Order shall be construed as prohibiting Plaintiffs from using a document without a unique bates number. In the event a document is used without a bates number, the parties agree to supplement the record with a bates-numbered document within a reasonable period of time. Regardless of whether a document

has a unique bates number, the provisions of CMO 3 shall apply.

5. After Defendants have made their confidentiality designations, or the 30-day confidentiality designation period has expired, whichever is earlier, the original documents received by counsel for Plaintiffs (without the confidentiality designations) shall be maintained by the PEC. To the extent that these documents have been loaded into any database or review platform without the confidentiality designations, those designations shall be added to these documents. These original documents shall be destroyed or returned at the conclusion of this litigation.

6. Nothing in this Agreed Order is a waiver of any right of Plaintiffs to challenge any confidentiality designation under the provisions of CMO 3.

IV. DEPOSITION PROCEDURES AND LIMITATIONS

A. General

1. No more than two depositions of current or former employees of the Defendants may be scheduled by any party on the same day absent agreement by the parties or order of the Court.

2. For all depositions of Defendants' current employees residing in the United States that are agreed to or ordered by the Court, such witnesses will be made available for deposition without requiring a subpoena.

3. Unless otherwise agreed, depositions shall take place only on business days (Mondays through Fridays, excluding legal holidays).

B. Sequence of Examination of Current and Former Company Employees

Except as otherwise ordered by the Court, or agreed to by the parties, the length of time of the depositions shall be governed by New Jersey law. It is presumed that depositions will not exceed 10.5 hours of on-record time by the noticing party. The non-noticing party is entitled to

examine the witness without leave of the Court. Should any questioning by the lawyer for the non-noticing party occur, the original examining lawyer shall be entitled to ask additional questions for a reasonable amount of time. In the event that either party believes additional on-record time is necessary, the parties shall meet and confer. If the parties cannot agree, the parties will adjourn the deposition and seek the Court's guidance. Unless otherwise agreed by the parties, no one day will exceed 7 hours of on-record deposition time.

C. Treating Physicians

1. The parties agree that each side will have a reasonable opportunity to question individual treating physicians whose testimony is reasonably necessary under the circumstances of this case.

2. If the parties agree to a treating physician's request to limit the time for a deposition, the parties will work together to ensure that each side receives adequate time.

3. Any additional provisions with respect to treating physician depositions will be established by further order of the Court.

D. Coordination/Cross-Noticing of Depositions

1. Under no circumstances shall more than two attorneys for each side (the PSC and for the Defendants) from Proceed Mesh MCL, No. 630 question a witness in a deposition noticed in this litigation. The PEC shall designate who will be permitted to question a witness at a deposition. Lawyers from Proceed Mesh MCL No. 630 shall not ask duplicative questioning, except to the extent necessary to establish foundation, where the witness fails to answer the question, where the witness is nonresponsive, or to address questioning deemed inadequate.

2. Nothing in this Order shall limit counsel from MCL No. 630 from questioning a

witness regarding other products manufactured by Defendants which form the basis for claims in the MCL. Nothing in this Order shall limit counsel in MCL 630 from noticing a deposition of a witness in cases not consolidated in this MCL.

E. Use of Interpreter

1. All deposition questions will take place in English. If any witness requires an interpreter, the party defending the deposition shall endeavor to notify the party noticing the deposition at least 30 days before the deposition, or as soon as practicable after learning of the need, that an interpreter will be required.

2. Such depositions with an interpreter shall proceed in the same manner as all other depositions, except as follows:

   a. A qualified interpreter (whom the parties will meet and confer to select) will translate all questions from English to the deponent's language, and will translate all of the deponent's answers back to English; the interpreter will translate all discussions by counsel that are on the record to the deponent's language, whether in the form of objections or otherwise.

   b. The court reporter will be instructed to transcribe only the question (in English) and the interpreted answer (in English).

   c. All depositions using an interpreter will be recorded in the native language and in English by audio and video recording.

   d. All objections to the interpretation of any question or answer must be made within 90 days of receipt of the final transcript, or will be deemed waived without good cause shown.

   e. At no point during the deposition will counsel for either party converse with the deponent in any language other than English.

f. If a witness testifies through an interpreter, the time limits for such deposition shall be increased as necessary.

V. COSTS

A. Cost of Physician Depositions, Interpreters

1. For depositions of physicians, the party noticing the deposition shall be responsible for payment.

2. For depositions requiring an interpreter, the party noticing the deposition shall be responsible for payment.

VI. ATTENDANCE; OBJECTIONS; DISPUTES

A. Attendance

1. The parties may have a client representative present at depositions.

2. To the extent not inconsistent with the provisions of CMO 3, Counsel for a party or nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive HIGHLY CONFIDENTIAL Documents or Information pursuant to CMO 3, but such right of exclusion shall be applicable only during periods of examination or testimony during which HIGHLY CONFIDENTIAL Documents or Information are being used or discussed. This does not include counsel for the deponent.

B. Objections

1. All objections, except as to the form of the question are reserved to the time of the trial and are not waived, including objections to the foundation. "Speaking objections" are not permitted although the basis of objections to the form of the questions may be stated.

2. An objection by one party reserves the objection for all parties.

C. Disputes

1. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule, require rescheduling of the deposition, or possibly result in the need to conduct a supplemental deposition, shall be presented via telephone call to the Chambers of Judge Porto. The presentation of the issue and the Court's ruling will be recorded as part of the deposition.

2. In the event Judge Porto is not available, all efforts will be made to continue the deposition with full reservation of rights of the examination for a ruling at the earliest possible time.

VII. USE OF DEPOSITIONS

A. Use in Other Proceedings

Depositions may be used in accordance with the Rules Governing the Court of the State of New Jersey and/or as permitted by the New Jersey Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court as part of this litigation): (a) who was present or represented at the deposition; (b) who had reasonable notice thereof; or (c) who, within 30 days after the completion of the deposition (or, if later, within 90 days after becoming a party in this court in any action that is a part of this litigation), fails to show just cause why such deposition should not be usable against such party.

HONORABLE JOHN C. PORTO, J.S.C.