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FILED

SEP 25 2012

Carol E. Higbee, P.J.Cv.

IN RE: ACCUTANE® LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY CASE NO. 271 CIVIL ACTION ACCUTANE® LITIGATION
IN RE: ISOTRETINOIN LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY DOCKET NO.: ATL-L-1321-09 MT CIVIL ACTION **ORDER VACATING AND SUPERSEDING THE MARCH 6, 2009 ORDER REGARDING THE RETENTION OF EXPERT WITNESSES AND CONTACTS WITH PLAINTIFFS' TREATING PHYSICIANS**

THIS MATTER having been brought before the Court by Defendants Hoffmann-La Roche Inc. and Roche Laboratories Inc. ("Roche"), through its counsel Gibbons P.C., seeking the entry of an Order vacating the March 6, 2009 Order regarding the retention of expert witnesses and contacts with treating physicians by Defendants and superseding the provisions of the March 6, 2009 Order, in accordance with the June 1, 2012 Appellate Division Opinion and August 3, 2012 trial court Order in In Re Pelvic Mesh/Gynecare Litigation, and counsel for the generic isotretinoin defendants, joining in this request, for good cause shown:

IT IS on this 25 day of September, 2012,

ORDERED THAT:

1. The March 6, 2009 Order is vacated and superseded by this Order.

2. Prior Discovery, Scheduling and Case Management Orders shall be revised to allow for the implementation of this Order and shall be superceded, as relevant, by this Order.

3. Roche and generic isotretinoin defendants (the "Defendants") are hereby permitted to retain as an expert witness any physician who is identified as a treating physician of a plaintiff in this litigation, subject to the following:

a. Defendants and their attorneys shall monitor whether the physician-expert has treated any of the plaintiffs;

b. Defendants and their attorneys shall not communicate with the physician-expert about any of his/her patients who are plaintiffs;

c. Defendants and their attorneys shall not retain a treating physician as an expert in any case brought by a patient of the physician; and

d. Defendants and their attorneys, before having any substantive communication with a prospective physician-expert, shall provide the physician with a copy of this Order and secure the physician's written acknowledgement that he/she has read the attached Memorandum to Physicians (Exhibit 1 to this Order).

4. Plaintiffs' counsel and patient-plaintiffs shall not suggest to treating or consulting physicians that any prohibition exists as to the physician's participation as an expert in this litigation for either side. However, nothing in this Order precludes a patient-plaintiff from personally contacting his/her physician and discussing any personal concerns he/she has about the physician testifying for the defense. All counsel, their agents, and their clients shall

truthfully communicate the cautions and constraints regarding participation of a treating physician as stated in the attached Memorandum to Physicians. Defense counsel shall also make clear to treating physicians that their informal participation in communications with Defendants and their attorneys shall be entirely voluntary.

5. Defendants shall be precluded from calling a treating physician to testify with regard to causation issues with regard to that physician's own patient-Plaintiff(s), if that treating physician has been retained as a consultant/expert by the Defendants.

6. Any objection by a Plaintiff to a particular treating physician being permitted to act as a consultant/expert for the Defendants with regard to Plaintiffs not treated by that physician shall be addressed on a case-by-case basis.

7. Plaintiffs' counsel will identify to defense counsel past or present treating or consulting physicians for any new plaintiff via timely submission of Plaintiffs' Fact Sheets, containing complete information.

8. Defense counsel shall give notice to Plaintiffs' counsel of their good faith intent to contact any specific past or current treating or consulting physician for the purpose of exploring whether that physician might be engaged as a defense expert at least 10 days before making such contact. This notice shall not constitute a waiver of the confidentiality afforded communications between attorneys and consultants pursuant to applicable law.

9. At the time this notice is given, Defendants also shall make a list of all Plaintiffs treated by the physicians identified in Defendants' notice (the "Listing"). The Listing of Plaintiffs shall identify each physician separately, with a list of that physician's Plaintiff-patients under the physician's name, and with the name and address of each Plaintiff-patient's attorney next to the Plaintiff-patient's name. The Defendants must send the entire Listing to Plaintiffs'

liaison counsel, and must send that portion of the Listing applicable to a particular physician to that physician. Physicians are directed, pursuant to the attached Memorandum, to send notification of a potential expert relationship to each patient on their portion of the Listing and to that patient's attorney.

10. Defendants must perform periodic conflict checks against their treating physician database in order to update the Listing periodically and provide updates to Plaintiffs' counsel and to affected physicians. If Defendants learn of a potential treatment relationship outside of the conflict check procedure for any physician identified on the Listing, Defendants shall notify Plaintiffs' counsel and the affected physician of that potential treatment relationship within 5 business days.

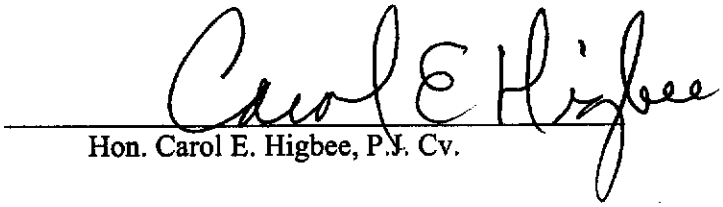
11. Defense counsel shall make best efforts to ensure that any physician who is retained or otherwise substantively consulted by defense counsel notifies any current patient-plaintiffs of that engagement so that the patient is provided an opportunity to transfer his/her care and treatment to a different physician.

12. Defense counsel shall not be obligated to give further notice to plaintiffs' counsel after the initial notification to plaintiffs' counsel as to any physicians that the defense in fact interviews, consults, or retains, until required to do so by discovery rules and orders, but no interviews or contacts shall be undertaken without permission of the Court unless defense counsel is actually seeking to retain an expert witness or consultant and any interview or contact is actually for the purpose of determining whether to retain the expert as a consultant or witness.

13. If a physician advises defense counsel at any time that he or she does not wish to be an expert or consultant, or defense counsel decides not to retain the physician, then

communication with the physician shall cease unless the Court grants permission upon application by defense counsel on a case-by-case basis.

IT IS FURTHER ORDERED THAT a copy of this Order shall be served upon all parties by counsel for Defendants within 7 seven (7) days from receipt hereof.



Hon. Carol E. Higbee, P.J. Cv.

EXHIBIT 1

Memorandum to Physicians

Defendants Hoffmann-La Roche Inc. and Roche Laboratories Inc. ("Defendants") are permitted to consult or retain as expert witnesses physicians who may have treated one or more patients who are Plaintiffs in this litigation. Despite their service as experts, these physicians are still bound by the physician-patient privilege and are forbidden from communicating with Defendants, their employees, and their attorneys about their patients who are Plaintiffs, absent subpoena, their patients' written authorization, or another order from the Court. Defendants and their representatives shall identify which of a physician's patients are Plaintiffs before any substantive communication begins. If a physician, at any time, believes that Defendants are attempting to communicate about a Plaintiff who is or was the patient of the physician, directly or indirectly, the physician shall cease contact with Defendants, and notify the below listed counsel for Defendants and Plaintiffs.

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Any physician who agrees to be retained or otherwise substantively consulted, by the Defendants, whether paid or not, shall promptly notify any current patient-Plaintiff of that engagement and provide to the patient(s) the opportunity to transfer his/her or their care and

treatment to a different physician. This notification shall be in writing with a copy to that patient's attorney.

Dated: _____ _____