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IN RE PROPECIA ® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Case No. 623

FILED

MAY 30 2019

Civil Action

Judge James F. Hyland

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THIS DOCUMENT APPLIES TO
ALL CASES

**ORDER CONCERNING
REQUIREMENTS FOR
PRESERVATION OF RECORDS AND
PRIMA FACIE EVIDENCE OF USAGE,
INJURY, AND CAUSATION**

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IT IS on this 30th day of May, 2019,

ORDERED as follows:

This Order applies to all Plaintiffs with personal injury claims pending in Case No. 623 who are represented by counsel as of the entry of this Order and who elected not to participate in the voluntary Settlement Program, Plaintiffs proceeding *pro se* and all Plaintiffs with personal injury claims later filed in or transferred to this Court after the entry of this Order, whether represented by counsel or proceeding *pro se*. This Order requires all such Plaintiffs to comply with certain preservation obligations and to produce certain specified information regarding their claims.

I. PRESERVATION NOTICE REQUIREMENT

A. For all cases pending in Case No. 623 as of the entry of this Order Plaintiff shall, no later than ten (10) days from the entry of this Order send a written notice (the "Notice") by registered mail (with return receipt) to the following individuals or entities, advising that the individual or entity may have records relevant to the Plaintiff's claim ("Claim") and that any records relating to the Plaintiff must be preserved pending collection by Plaintiff:

1. All pharmacies that dispensed any medication to the Plaintiff for the period from five (5) years prior to the date of the alleged injury in the case to the present;
2. All physicians, medical facilities, other healthcare providers and/or other persons (“other providers”) who provided any care and treatment to Plaintiff for injuries alleged in the case to be the result of ingesting Propecia, Proscar, or finasteride;
3. All physicians and/or other healthcare providers who treated Plaintiff for any condition for the period from five (5) years prior to the date of the injury alleged in the case to the present; and
4. All employers of the Plaintiff for a period from five (5) years prior to the date of the alleged injury to the present, to the extent any claim is asserted for lost past or future wages.

B. Counsel for Plaintiff (or Plaintiff if proceeding *pro se*) shall, by **June 7, 2019**:

1. Serve a signed Certification verifying that the Notices referenced in paragraph I.A. were sent as required by this Order, listing the date(s) the Notices were sent, the names and addresses of all individuals or entities to which Notices were sent, and providing copies of the Notices to Defendants’ counsel;
2. Served a completed and signed and dated Plaintiff Fact Sheet (“PFS”) attached as Exhibit A that complies with the requirements of Case Management Order No. 3.

3. Serve the HIPAA Authorization and Consent to Release Records and Protected Health Information (Excluding psychotherapy notes) attached as Exhibit B; the HIPAA Authorization and Consent to Release Psychotherapy Notes attached as Exhibit C; the Authorization and Consent to Release Military Service Records attached as Exhibit D; the Authorization and Consent to Release Medical Records or Health Information from the Department of Veterans Affairs attached as Exhibit E; the Social Security Administration Consent to Release of Information attached as Exhibit F; the Request for Social Security Earnings Information attached as Exhibit G; Tax Information Authorization, Form 8821, attached as Exhibit H; and Request for Copy of Tax Return, Form 4506, attached as Exhibit I;
4. If not previously produced, serve letters of administration and/or other documentation required from an authorized legal representative to effectuate HIPAA authorization(s).

C. Any Plaintiff who fails to fully comply with any of the applicable requirements of this Section above shall be provided notice of such failure by **June 14, 2019**, via email, fax or letter from Defendants' counsel. Plaintiff shall have until **June 28, 2019**, to cure such deficiency ("Cure Period"). No other extensions will be permitted absent Court order upon motion by Plaintiff. No other extensions will be granted unless agreed to by all parties.

D. If a Plaintiff fails to cure the deficiency within the Cure Period,

1. By **July 8, 2019**, Defendants may file a Motion to Show Cause why the case should not be dismissed with prejudice, with each party to bear its own costs.
2. Plaintiff shall file a Response to the Motion by **July 23, 2019**.
3. Defendants may file a Reply by **August 1, 2019**.

4. The failure of a Plaintiff to respond to the Motion to Show Cause within the specified period shall result in the *sua sponte* dismissal of the case, with prejudice, with each party to bear its own costs.

E. Any Plaintiff who fails to comply with the above provisions and has not cured all deficiencies as set forth above may not seek to introduce into evidence at trial any document asserting use of Propecia, Proscar, or finasteride, or asserting that Propecia, Proscar, or finasteride caused or contributed to the Plaintiff's alleged injury, absent good cause shown. This preclusion does not apply to documents produced by plaintiff and served upon Defendants prior to the entry of this Order. Defendants may raise any objection to the admissibility of such documents at an appropriate time.

II. DISCOVERY REQUIREMENTS

A. By **August 15, 2019**, each Plaintiff subject to this Order shall produce to Defendants' counsel the following:

1. All pharmacy records regarding the dispensation of medication to the Plaintiff for the period from five (5) years prior to the date of the alleged injury to the present;
2. All medical records relating to the Plaintiff from all healthcare providers listed in the PFS for the period from five (5) years prior to the date of the alleged injury to the present;
3. If plaintiff asserts a claim for lost past or future wages, all employment records for Plaintiff, as well as federal and state income tax returns for the period from five (5) years prior to the date of the alleged injury to the present; and

4. An Affidavit or Declaration executed by Plaintiff or his counsel attesting that all the records described in this Section have been requested, collected and produced to Defendants. To the extent Plaintiff or his counsel attempted to collect records and received a "No Records" statement in response to the records request, Plaintiff or his counsel shall provide a copy of any such "No Records" statement upon Defendants.

B. Each Plaintiff shall produce an expert report or reports complying in all respects with Rule 4:17-4(e) of the Rules Governing the Courts of the State of New Jersey Rule 4:17 as follows:

1. By **October 15, 2019**, plaintiff shall serve a Rule 4:17-4(e) expert report on general causation concerning the alleged injury;
2. By **November 15, 2019**, plaintiff shall serve a Rule 4:17-4(e) case-specific expert report establishing the causation of the plaintiff's alleged injury. The case-specific report should include, at a minimum, a precise identification of plaintiff's Propecia, Proscar, and/or finasteride usage; details of plaintiff's alleged injury; details of any medical exams, testing, diagnosis, or treatment relied upon to support any claimed injury; a sworn statement by a competent medical expert that the expert believes to the appropriate degree of medical certainty that the plaintiff's use of Propecia, Proscar, or finasteride caused plaintiff's alleged injury, with a detailed description of all facts, medical and scientific literature, or other authorities relied upon by the expert to support such opinion; and a complete set of medical records on which the expert relied in forming the expert's opinion; and

3. By **January 3, 2020**, depositions of plaintiff's expert witnesses, both general causation and case-specific, shall be completed.

C. Any expert designated by Plaintiff who does not provide a complete and timely report as set forth herein shall be precluded from testifying at trial, absent further order of the Court upon good cause shown.

D. Plaintiff shall not be permitted to engage in any further discovery of the Defendants relating to general liability issues, absent a motion and good cause shown.

E. The parties shall be permitted to engage in case-specific discovery up until the date on which the case-specific expert report(s) described above are due to be served.

F. Plaintiff and any consortium Plaintiff shall be made available for deposition by the Defendants by **September 16, 2019**, but no later than **November 15, 2019**, although Defendants may elect to take the deposition at a mutually agreed upon later date.

G. Plaintiff shall not be entitled to take additional discovery of Defendants' expert witnesses regarding general causation absent leave of Court or for good cause shown. In the event Plaintiff submits a general causation expert witness report setting forth a new theory of general causation not mentioned in Defendants' prior expert reports, Defendants shall have the right to submit a rebuttal report within forty-five (45) days after receipt of Plaintiff's general causation expert report.

H. The Court shall meet with the parties to establish an appropriate discovery schedule to address deadlines for when Defendants' specific causation expert reports shall be served.

I. By **November 22, 2019**, any Plaintiff who fails to comply with the requirements of Section II shall be given notice of such failure by email, fax or letter from Defendants' counsel.

By **December 6, 2019**, Plaintiff must cure such deficiency (“Cure Period”). No other extensions will be granted.

J. By **December 13, 2019**, if Plaintiff fails to cure the deficiency within the Cure Period, Defendants may file a Motion to Show Cause, requiring Plaintiff to show cause why the case should not be dismissed with prejudice, with each party to bear its own cost.

1. By **December 20, 2019**, Plaintiff shall respond to the Motion to Show Cause.
2. By **December 27, 2019**, Defendants may file a Reply.
3. If Plaintiff fails to respond to the Motion to Show Cause within the specified period, the Court shall *sua sponte* dismiss the case with prejudice, with each party to bear its own costs.

K. To the extent that this Order conflicts with any deadlines or provisions in other Case Management Orders, this Order shall govern.

III. MOTIONS PRACTICE

A. **Dispositive motions:** The parties may file dispositive motions at any time but not later than **January 20, 2020**, absent leave of Court. A Response must be filed within fourteen (14) days of the filing of the motion(s). The moving party may file a Reply within seven (7) days of the Response.

B. **Expert motions:** The parties may file motions to exclude expert witnesses at any time after the entry of this Order but not later than **January 20, 2020**, absent leave of Court. A Response must be filed within fourteen (14) days of the filing of the motion(s). The moving party may file a Reply within seven (7) days of the Response.

C. The Court will endeavor to rule on such motions on or before **March 3, 2020**.

IV. PENALTIES FOR FRAUD AND DECEPTION

All submissions required by this Order are subject to Rule 1:4-8 of the Rules Governing the Courts of the State of New Jersey. Any party and/or counsel who submits false or misleading information, or otherwise attempts to avoid the requirements of this Order through any form of deception, dishonesty or fraud, may be subject to appropriate sanctions, including monetary sanctions and costs, and/or dismissal with prejudice pursuant to Rule 4:37-2 of the Rules Governing the Courts of the State of New Jersey.

V. SERVICE PURSUANT TO THIS ORDER

Whenever this Order requires service by plaintiff, plaintiff shall effect such service on all counsel of record in the case as required by the applicable Rules and to the Defendants' counsel as follows:

Via email to:

- Mac Plosser (Mac.Plosser@butlersnow.com)
- Robin Hall (Robin.Hall@butlersnow.com)
- Bonnie Tuten (Bonnie.Tuten@butlersnow.com)

Or by U.S. mail to:

Robin Hall
Butler Snow LLP
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157

IT IS FURTHER ORDERED that a copy of this Order shall be served on all counsel of record immediately upon receipt of the entered Order or as soon thereafter as is practicable.

/s/ James F. Hyland

HON. JAMES F. HYLAND, J.S.C.