

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPIPRAZOLE)
PRODUCTS LIABILITY LITIGATION

This Document Relates to All Cases

Case No. 3:16-md-2734

Judge M. Casey Rodgers
Magistrate Judge Gary Jones

**ORDER REGARDING DEFICIENCY PROCESS FOR
PLAINTIFF FACT SHEETS, RECORDS AUTHORIZATIONS, PLAINTIFF
PROFILE FORMS AND SUPPLEMENTAL PLAINTIFF PROFILE FORMS**

WHEREAS in the Order Establishing Second Group of Potential Discovery & Trial Pool Cases, ECF No. 953, the Court required each Plaintiff in the second discovery pool to provide by October 12, 2018 a completed Plaintiff Fact Sheet, together with medical, financial, and/or gambling records authorizations for each of the sources identified in the Plaintiff Fact Sheet, and copies of relevant medical, financial, and/or gambling records in Plaintiff's or Plaintiff counsel's possession;

WHEREAS in Case Management Order No. 15, ECF No. 993, the Court amended this deadline with respect to the six fast-track cases to one week after the identification of the six cases. As the cases were identified by the Court on September 14, 2018, the deadline for the six fast-track Plaintiffs was September 21, 2018;

WHEREAS in the Order Establishing Second Group of Potential Discovery & Trial Pool Cases, ECF No. 953, the Court required that with respect to the second

discovery pool, should any additional authorization(s) be required for healthcare providers, financial, and/or gambling entities not identified in the Plaintiff Fact Sheet, Plaintiffs must provide such authorization(s) within two business days of Defendants' notifying Plaintiffs of the need;

WHEREAS in Case Management Order No. 16, ECF No. 1034, the Court directed the parties to meet and confer regarding a formal "process for identifying core deficiencies, the sending of a deficiency notice letter, a short period for addressing alleged deficiencies, and a schedule for motion practice for unresolved compliance issues."

The Court orders as follows:

1. The following deficiency process will apply to compliance with the aforementioned requirements by the 29 Plaintiffs in the second discovery pool identified in the Joint Notice Regarding Cases Stricken From Second Trial & Discovery Pool, ECF No. 978 (the "Second Discovery Pool")¹.

a. By November 2, 2018, Defendants must provide written notice to counsel of record of any alleged outstanding deficiencies for each of the Plaintiffs in the Second Discovery Pool ("Deficiency Letters"). Defendants

¹ Plaintiff Thomas Arnold has dismissed his case with prejudice.

must provide a courtesy copy of the notice to Plaintiffs' Discovery Committee and Co-Lead Counsel.²

b. The parties must make a reasonable effort to meet and confer regarding the deficiencies raised in the Deficiency Letters, but in any event, Plaintiffs' November 12, 2018 deadline set forth in (c) below will not be extended.

c. By November 12, 2018, Plaintiffs must respond to Defendants' Deficiency Letters by addressing the alleged deficiencies (including loading the relevant materials to MDL Centrality) or otherwise explain in writing why they disagree with the deficiencies alleged by Defendants.

d. By November 16, 2018, Defendants will file an appropriate motion identifying the Plaintiffs with any alleged uncured Core Deficiencies (as defined below) and the Core Deficiencies at issue and requesting the relief contemplated by CMO 16. Plaintiffs must file a response to Defendants' motion by November 21, 2018.

2. Core Deficiencies are those that are material “[t]o establish a fair and informative bellwether process and enable the parties to better assess the strengths and weaknesses of this MDL, as well as the potential value of individual claims....” *See* Case Management Order No. 16, ECF No. 1034. “Core Deficiencies” include:

² Defendants have already complied with this requirement.

- a. Any blank question on the Plaintiff Fact Sheet or the failure to answer any portion of any question on the Plaintiff Fact Sheet in accordance with the instructions in the Plaintiff Fact Sheet;
- b. Failure to verify the Plaintiff Fact Sheet;
- c. Failure to provide an authorization for any source of records identified in the Plaintiff Fact Sheet unless such source has been objected to by Plaintiff's counsel by November 12, 2018 (If a Plaintiff has objected to providing an authorization, the Defendants may include the issue in their motion described in Section 1(d) above);
- d. Failure to provide substantive answers to the following sections of the Plaintiff Fact Sheet:
 - II.Q: Witnesses
 - III.A: Indication
 - III.C: Prescribing Physicians
 - III.G: Pharmacies
 - IV.I, IV.J, IV.K and IV.L: Gambling questions
 - IV.N: Drinking History
 - IV.O: Unauthorized prescriptions or controlled substances
 - IV.P: List of known mental healthcare providers as required by the Plaintiff Fact Sheet

V. Damages (the entire section including sub-parts, except that it is not a Core Deficiency for a Plaintiff not to quantify non-economic damages)

- e. Failure to provide authorizations for any mental healthcare provider or primary care physician not identified in the Plaintiff Fact Sheet within two business days after the request for same (or failure to object in the same period), as required in ECF No. 953 and as further set forth below;
- f. This definition of Core Deficiencies only applies to the deficiency process as set forth above and does not limit the scope of Defendants' discovery.³

3. In amending the Plaintiff Fact Sheets by the November 12, 2018 deadline, each Plaintiff in the Second Discovery Pool must provide to Defendants a single package via e-mail that includes all answers to the Plaintiff Fact Sheet with a verification for the amended version. Plaintiffs, with assistance from Defendants as needed, will work with BrownGreer to resolve technical problems with the Plaintiff Fact Sheets to ensure that going forward, Plaintiffs will load Plaintiff Fact Sheets to MDL Centrality in one, verified document with all the information visible in the

³ By defining Core Deficiencies here, Defendants do not concede that this list is necessarily exhaustive – in particular, Defendants may determine that an issue is material to a specific Plaintiff given the particular facts of his or her case.

single document, as opposed to separate supplemental pages, addenda, or verification pages.

4. After November 12, 2018, Plaintiffs in the Second Discovery Pool may not amend their Plaintiff Fact Sheets except: (1) by leave of the Court; (2) with Defendants' permission; or (3) if Plaintiffs discover genuinely new information that was not known on or before November 12, 2018. To the extent there is a dispute regarding whether certain information is "genuinely new" and/or "not previously known" for purposes of amending a Plaintiff Fact Sheet, Defendants must file an appropriate motion with the Court within five days of receiving the disputed information.

5. During the records collection process, additional providers or sources of records may be identified, and additional information may be needed for providers or sources of records previously identified. Defendants must notify Plaintiffs in the Second Discovery Pool if they believe any additional authorization(s) are necessary for healthcare providers, financial, and/or gambling entities not identified in the Plaintiff Fact Sheet. The parties must cooperate in good faith, and consistent with the Order Establishing Second Group of Potential Discovery & Trial Pool Cases, ECF No. 953, Plaintiffs must provide such authorizations within two (2) business days of Defendants' notifying Plaintiffs of the need, or explain to Defendants in writing within two (2) business days why they disagree. In addition, to facilitate

compliance with this requirement, the Plaintiffs in the Second Discovery Pool are directed to provide their counsel with a blank (but signed and dated) medical, financial, and gambling authorizations that their counsel can fill in as needed and provide to Defendants.

6. Specifically with respect to healthcare providers for Plaintiffs in the Second Discovery Pool, in addition to the authorizations provided for healthcare providers identified in the Plaintiff Fact Sheets, Defendants may request up to 35 HIPAA authorizations in each case for the following categories of healthcare providers, which Defendants identify in Plaintiffs' records or other discovery: pharmacies; health insurers; healthcare providers that prescribed Abilify; healthcare providers or medical facilities that treated any conditions alleged to have been caused by Abilify; all mental healthcare providers (including any individual practitioner, counselor, therapist, physician, psychiatrist, psychologist, practitioner of the healing arts, hospital, clinic, center, physician's office, or other facility or provider that provides or purports to provide psychiatric, mental, emotional, or psychological care or advice); all primary care providers and facilities; medical or diagnostic laboratories related to mental healthcare evaluation or diagnosis or addiction evaluation or diagnosis; any healthcare provider who treated or evaluated the Plaintiff for addiction, compulsivity, or impulsivity; and any healthcare provider

with whom the Plaintiff discussed gambling, impulsive behaviors, or compulsive behaviors.

7. When Defendants request authorizations for healthcare providers not identified in the Plaintiff Fact Sheet for Plaintiffs in the Second Discovery Pool in accordance with Paragraph 6 above, the Plaintiff must either: (1) provide the authorization to Defendants within the two business day period set forth above; or (2) within the same period, object to the request, identify for Defendants the specialty of the provider and explain why the provider does not fall within the categories listed above or is otherwise unwarranted. To the extent the requested authorizations are not provided within five days of the request, Defendants must file a motion to compel and show why the authorizations are relevant and proportional to the needs of the case.

8. With respect to healthcare providers for Plaintiffs in the Second Discovery Pool, Defendants may notify a Plaintiff if they believe additional provider(s) are warranted in an individual case. Defendants may obtain HIPAA authorizations and/or any other authorizations for healthcare providers beyond those covered above on a showing of good cause. To the extent Defendants request non-standard healthcare provider authorizations (i.e., facility-specific authorizations), Plaintiffs will endeavor to provide those authorizations within two business days. Plaintiffs agree to work cooperatively with Defendants and accommodate any

reasonable request. To the extent the non-standard healthcare provider authorizations are not provided within five days of the request, Defendants must file a motion to compel and show good cause as to why the authorizations are relevant and proportional to the needs of the case.

Deficiency Process for Plaintiff Profile Forms and Supplemental Plaintiff Profile Forms

9. Regarding all Plaintiffs in the MDL, the Defendants must identify any alleged deficiencies in the Plaintiff Profile Forms and/or Supplemental Plaintiff Profile Forms on a rolling basis and in any event no later than February 15, 2019. However, for Plaintiff Profile Forms and/or Supplemental Plaintiff Profile Forms filed after November 30, 2018 because the case at issue was filed, removed or transferred after August 31, 2018, this deadline will be seventy-five (75) days after the Plaintiff Profile Form and/or Supplemental Plaintiff Profile Form is served. Plaintiffs have thirty (30) days after service of Defendants' notice to address the alleged deficiencies by loading the relevant materials to MDL Centrality or otherwise explaining in writing why they disagree with any alleged deficiencies; provided that this time period is fourteen (14) days if the Plaintiff failed to file a Plaintiff Profile Form and/or Supplemental Plaintiff Profile Form, and this time period is forty-five (45) days if the law firm representing the Plaintiff filed both a Plaintiff Profile Form and Supplemental Plaintiff Profile Form for the Plaintiff at

issue and has to respond to deficiency notices in 100 or more cases. If Plaintiffs fail to cure the deficiencies within the time period set forth above, Defendants must file an appropriate motion within fourteen (14) days of the Plaintiff's response.

10. The Plaintiff Fact Sheets, Plaintiff Profile Forms, and Supplemental Plaintiff Profile Forms are to be treated as Confidential and subject to the Protective Order entered in this MDL given the sensitive and personal nature of the information disclosed.

DONE and **ORDERED** on this 6th day of November, 2018.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE