

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

IN RE: ABILIFY (ARIPIPRAZOLE)
PRODUCTS LIABILITY LITIGATION

Case No. 3:16-md-2734

This Document Relates To All Cases

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

ORDER REGARDING CONTACT WITH PHYSICIANS

Consistent with the Court’s Order entered on February 22, 2017 [ECF No. 201], the following will govern the parties’ interactions with an MDL Plaintiffs’ prescribing and treating physicians. As used in this order, an “MDL Plaintiff’s prescribing or treating physician” is a physician who has one or more patients who have filed a lawsuit (or whose representative has filed a lawsuit) pending in this MDL proceeding alleging that the patient sustained an injury caused by aripiprazole. A “prescribing physician” is the physician identified in the Plaintiff’s Profile Form or Plaintiff’s Fact Sheet as a physician who prescribed aripiprazole to the Plaintiff, as recorded in MDL Centrality; a “treating physician” is a physician who treated the injury alleged in the Plaintiff’s Profile Form or Plaintiffs’ Fact Sheet, as recorded in MDL Centrality.

1. Plaintiffs’ counsel may engage in *ex parte* communications with any MDL Plaintiff’s prescribing or treating physician. With respect to any such *ex*

parte communications, at least 48 hours before the deposition of the Plaintiff's prescribing or treating physician, Plaintiffs' counsel must provide to Defendants' counsel a complete accounting of all pre-deposition communications, oral and/or written held with the prescribing or treating physician, including:

- a. when the communication occurred;
- b. the approximate duration of the communication;
- c. the means of the communication (email, phone, etc.);
- d. the identity of all participants in the communication; and
- e. the identity of any documents, photographs, and

electronically-stored information shown, provided to, discussed with, or otherwise described to the physician. Plaintiffs' counsel are required to promptly supplement this disclosure if additional contacts occur prior to the deposition.

2. Defendants' counsel will not engage in *ex parte* communications with any MDL Plaintiff's prescribing or treating physician, except as permitted in paragraph 3 and its subdivisions. Nothing herein bars any employee, agent or representative of Defendants from engaging in communications with physicians in the ordinary course of business.

3. Going forward from the date of this Order, Defendants' counsel may engage in *ex parte* communications with up to 15 MDL Plaintiffs' prescribing or treating physicians (to be divided between the Defendants, collectively) for the

purpose of obtaining physician-experts for the five Northern District of Florida cases¹ identified in the Court's Case Management Order No. 2 entered February 2, 2017 [ECF No. 182] (the "Trial Pool Plaintiffs"). Defendants' counsel may retain as expert witnesses up to 8 MDL Plaintiffs' prescribing or treating physicians (to be divided between Defendants, collectively), no matter when the physicians were initially contacted by Defendants' counsel.

a. All *ex parte* communications by Defendants' counsel with an MDL Plaintiff's prescribing or treating physician must be limited to non-substantive discussions until the physician has affirmatively expressed a *bona fide* interest in being considered as a retained expert.

b. Defendants' counsel may not retain physician-experts who are prescribing or treating physicians, as recorded in MDL Centrality, of the Trial Pool Plaintiffs until the trial or disposition of the Trial Pool cases.

c. Defendants' counsel must disclose to Plaintiffs' counsel on the date set forth for disclosure of Defendants' testifying experts, the name of any testifying expert who per MDL Centrality has patients who are plaintiffs in the MDL proceeding, and the experts themselves have no further affirmative disclosure

¹ These cases are: *Eckert v. Bristol-Myers Squibb Company et al.*, 3:16cv536; *Perez v. Bristol-Myers Squibb Company et al.*, 3:16cv251; *Viechec v. Bristol-Myers Squibb Company et al.*, 3:16cv291; *Locklear v. Bristol-Myers Squibb Company et al.*, 3:16cv341; and *Lyons v. Bristol-Myers Squibb Company et al.*, 3:16cv414.

obligations. No disclosures are necessary for consulting experts until such time as an expert is identified as a testifying expert. Consulting experts contacted or retained by Defendants' counsel are subject to all of the requirements of this Order to the same extent as testifying experts, except that the disclosure requirements set forth in this sub-paragraph 3(c) will not apply to consulting experts until they are identified as testifying experts.

d. Defendants' counsel may communicate with a prospective physician-expert about his or her general clinical experiences with aripiprazole, provided that Defendants' counsel may not communicate with a physician-expert who has acted as a prescribing or treating physician about any of his or her specific patients who have taken aripiprazole.

e. Defendants must not use a physician as a consulting or testifying expert in a case where that physician's present or former patient is a Plaintiff in that case.

f. Defendants may rely on the disclosures in Plaintiffs' Profile Forms and Plaintiffs' Fact Sheets as recorded in MDL Centrality at the time the physician-expert is retained, in determining whether a physician is an MDL Plaintiff's prescribing or treating physician. Subsequent disclosures in Plaintiffs' Fact Sheets as recorded in MDL Centrality will not impact the count toward the cap in paragraph 3.

4. The numerical limits in paragraph 3 above are subject to modification by agreement of the parties or by court order for good cause shown. Among other things Defendants reserve the right to seek relief from those numerical limits should the number of cases filed in the MDL increase materially.

DONE and **ORDERED** on this 9th day of March, 2017.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE