

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: FOSAMAX (ALENDRONATE  
SODIUM): PRODUCTS LIABILITY  
LITIGATION (NO. II)

MDL No. 2243

Civil Action No. 08-08 (JAP)

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MAY - 2 2012

AT 8:30  
WILLIAM T. WALSH  
CLERK

THIS DOCUMENT RELATES TO:

ALL ACTIONS

CASE MANAGEMENT ORDER  
NO. 11

Presently before the Court are the parties' competing proposals regarding *ex parte* communications with Plaintiffs' treating and prescribing physicians. Defendant seeks an Order (1) authorizing its counsel to initiate and participate in *ex parte* communications with Plaintiffs' treating and prescribing physicians in those states where such communications are permitted; and (2) limiting Plaintiffs' counsel with respect to the topics and documents that can be discussed and disclosed in any *ex parte* communications they have with those physicians. Plaintiffs, on the other hand, seek an Order barring Defendant's counsel from initiating or participating in any *ex parte* communications with Plaintiffs' treating and prescribing physicians.

Having carefully considered both parties' proposals and arguments as set forth in their supplemental briefs, the Court concludes that Plaintiffs' proposal should be adopted. Indeed, "the just option in this case is to protect the relationship between a doctor and patient by restricting defendants from conducting *ex parte* communications with Plaintiffs' treating [and prescribing] physicians but allowing plaintiffs' counsel to engage in *ex parte*" communications with those physicians. *In re Vioxx Products Liability Litigation*, 230 F.R.D. 473, 477 (E.D. La. 2005)(emphasizing the importance of the physician-patient privilege, the implications of HIPAA, and various practical considerations in MDL proceedings). Although "[t]his approach appears, at

first glance, to be one sided and unfair . . . in actuality and as a practical matter, it is not,” and Defendant still has access to the information it seeks by way of a variety of mechanisms, including, *inter alia*, Plaintiff Profile Forms and depositions. *Id.* Furthermore, Plaintiffs’ proposal is consistent with the practices regarding this issue in the coordinated Fosamax proceedings currently pending in New Jersey Superior Court and the U.S. District Court for the Southern District of New York. Accordingly,

IT IS on this 1<sup>st</sup> day of May, 2012,

ORDERED that counsel for Defendant is not permitted to initiate nor participate in *ex parte* communications with Plaintiffs’ treating and prescribing physicians in any state.

Violations of this provision shall result in sanctions.

/s/ JOEL A. PISANO  
United States District Judge