

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

IN RE: ABILIFY (ARIPRAZOLE)
PRODUCTS LIABILITY
LITIGATION

This Document Relates to All Cases

Case No. 3:16-MD-2734

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

**ORDER GOVERNING THE RULES AND PROCEDURES REGARDING
THE AUTHORIZATION AND RELEASE OF PROTECTED
INFORMATION RELATING TO INDIVIDUAL PLAINTIFFS**

THIS MATTER is before the Court on the unopposed application of Plaintiffs' counsel for an Order aiding in the collection, discovery, and distribution of certain medical, financial, and gambling records relating to individual Plaintiffs, in compliance with and in furtherance of this Court's previous Orders. After consideration of this request and finding that such an Order would facilitate the orderly, uniform, and cost-effective acquisition and discovery of relevant information and materials for this litigation, this 1st day of May, 2017, IT IS HEREBY ORDERED as follows:

1. The Basis of this Order. Pursuant to this Court's Order dated March 23, 2017, a named Plaintiff is required to complete and serve a Plaintiff Profile Form within forty-five (45) days of March 23, 2017 for existing cases, and within thirty (30) days of filing for any newly filed cases. Stipulated Order Establishing Case

Management Schedule, ECF No. 273, at 2. In addition to the Profile Form, for any additional cases for which the Court orders a full work up, Plaintiff Fact Sheets with authorizations are due within forty-five (45) days of the date of such Order. *Id.*

In order to comply with these court-ordered obligations and to fully and accurately complete their Profile Forms and Fact Sheets, Plaintiffs must be able to obtain certain healthcare, casino, and financial institution records that are relevant to their legal claims in this litigation. Plaintiffs' counsel has represented to the Court that some entities and individuals having custody of these records have refused to release such records unless specific forms prepared by the particular entity are used and/or, in the case of records for which Plaintiffs do not enjoy a right of access, unless served with a subpoena or similar compulsory process. Requiring specific forms prepared by individual entities causes a delay in the exchange of relevant information in this litigation. In order to facilitate the timely exchange of medical and other information, Plaintiffs' counsel has prepared three (3) Authorization Forms: a "HIPAA and HITECH Compliant Medical Authorization," which is fully compliant with the Health Insurance Portability and Accountability Act ("HIPAA"), a "Gambling Records Authorization," and a "Financial Records Authorization." The two (3) Authorization Forms are attached together as Exhibit A. The purpose of this Order is to provide for a simple, uniform, and cost-effective process for the collection and discovery from third parties of records relevant to claims pending

before this Court. Accordingly, this Order is issued pursuant to the Court's authority to direct and control the coordinated discovery in this litigation pursuant to 28 U.S.C. § 1407; Federal Rules of Civil Procedure 16, 26(b), 27, and 45; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent authority regarding discovery in the MDL.

2. Plaintiffs Affected by This Order. This Order applies to all claims pending before this Court under MDL 2734. This includes cases originally transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its Order of October 3, 2016 or as tag-along actions and all related cases originally filed in this Court or transferred or removed to this Court. For the avoidance of doubt, this Order does not apply to any claims that have not been filed or are not pending before this Court under MDL 2734.

3. Discovery Affected by this Order. This Order applies to the procurement of information and materials from entities (including, but not limited to, physicians, healthcare providers, pharmacies, banks, casinos, educational facilities, former and present employers, insurance providers, all branches of the military, and any other federal, state, and/or local government agencies) relating to Plaintiffs referred to in Paragraph 2 above.

4. Duty to Accept Court-Approved Authorizations. The HIPAA and HITECH Compliant Medical Authorization and the Financial Records

Authorization attached to this Order have been approved for use in all claims affected by this order, and the “HIPAA and HITECH Compliant Medical Authorization” is HIPAA compliant. Accordingly:

a. All physicians, healthcare providers, financial institutions, casinos, any federal, state, and/or local government agencies, and any other entity asked to produce medical, financial, or gambling records relating to a claimant (collectively, “Entities”) must accept the Authorization Forms as valid for all claims affected by this Order, *provided, however*, that nothing in this Order or the Authorization Forms requires any Entity to produce records for which Plaintiffs do not otherwise possess a legal right of access, except as provided in Paragraph 4(b) below;

b. With respect to the production of records for which Plaintiffs do not otherwise possess a legal right of access, the Authorization Forms may be appended to and incorporated by reference into a subpoena, which must comply with Rule 45 of the Federal Rules of Civil Procedure and any other applicable legal requirements and must be served with a duly completed “Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action” in the form attached as Exhibit B. Plaintiffs’ counsel may serve an Entity via personal service using page 2 of Exhibit B, but may also serve an Entity via U.S. mail, Fed-

Ex, UPS, or other carrier service.¹ Proof of service must be retained by Plaintiffs' counsel, but need not be filed with the Court.

c. Whenever any Entity is served or furnished with an Authorization Form for a Plaintiff, the Plaintiff's attorney or a *pro se* Plaintiff must cause the Entity simultaneously to be served or furnished with a copy of this Order in its entirety, excluding Exhibits;

d. Entities may not request or insist on different forms or terms different from the Authorization Forms;

e. When signed by a Plaintiff or Plaintiff's personal representative² in claims affected by this Order, the Authorization Forms must be relied on by all

¹ See, e.g., *SEC v. Rex Venture Grp., LLC*, No. 5:13-MC-004-WTH-PRL, 2013 WL 1278088, at *2 (M.D. Fla. Mar. 28, 2013) (holding that service by certified mail and FedEx is sufficient to satisfy the delivery requirement of Rule 45 because "the purpose of service—i.e., that [the deponent] was put on notice—has been effectuated"). But see *In re Matter Under Investigation by Grand Jury No. 1*, No. 10-81252-MC, 2011 WL 761234, at *1 (S.D. Fla. Feb. 24, 2011) ("Authority in this circuit suggests that a subpoena such as the one served in this case must be personally handed to the person named on the subpoena." (citing *Harrison v. Prather*, 404 F.2d 267, 273 (5th Cir.1968))).

² The appointment and authority to act of a Plaintiff's personal representative are governed by state law. See, e.g., *Hassanati ex rel. Said v. Int'l Lease Fin. Corp.*, 643 F. App'x 620, 622 (9th Cir. 2016) (holding that federal courts do not have jurisdiction over the "appointment of a personal representative . . . because it, essentially, seeks that a court issue letters of administration" (citing *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006); *In re Marshall*, 392 F.3d 1118, 1132–33 (9th Cir. 2004), *rev'd on other grounds sub nom. Marshall v. Marshall*, 547 U.S. 293); *OPIS Mgmt. Res., LLC v. Sec'y, Fla. Agency for Health Care Admin.*, 713 F.3d 1291, 1296 (11th Cir. 2013) (explaining that the HIPAA privacy rule defines a "personal representative" by reference to one "who has authority to act . . . under state law" (emphasis added) (citing 45 C.F.R. § 164.502(g)(4))); cf. *In re Yasmin & Yaz (Drospirenone) Mktg., Sales Practices & Relevant Prods. Liab. Litig.*, No. 3:09 MD 02100 DRH, 2010 WL 4608609, at *1 (S.D. Ill. Nov. 4, 2010) (explaining that "the appointment of a personal representative for [a] decedent is the province of the state court[s]" and "is a probate-type proceeding; such

Entities to authorize the release of all records, including all medical and psychiatric records;

f. No facility-specific or different form will be necessary for the production of any records relating to claims affected by this Order;

g. A photocopy or .pdf image of the Authorization Forms must be accepted;

h. No original signatures may be required on the Authorization Forms for the production of any records;

i. Any Authorization Forms dated after the entry of this Order will be effective for the production of any records relating to a Plaintiff and no differently dated Authorization will be necessary or requested by the Entities;

j. Entities may not impose any waiting period for the production of records; and

k. Entities may not condition the release of requested records on the payment of unreasonable “processing” or “handling” fees.

DONE AND ORDERED on this 1st day of May, 2017

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE

proceedings are typically outside the power of the federal courts” (citing *Rice v. Rice Foundation*, 610 F.2d 471, 474 (7th Cir. 1979))).

EXHIBIT A

HIPAA AND HITECH COMPLIANT MEDICAL AUTHORIZATION

Patient Name: _____

Other names used by Patient: _____

DOB: _____

SSN: _____

Provider Name: _____

Provider Address: _____

I hereby authorize all health care providers, physicians, hospitals, clinics and institutions, medical facilities, mental health clinics, mental health hospitals, pharmacies, educational facilities, former and present employers, insurance providers, including Medicare and Medicaid, Social Security Administration disability Determination Services, and Department of Workers' Claims, to release all existing medical records and information, relating to the medical care, treatment, physical/mental condition, and documentation of medical expenses revealed by your observation or treatment past, present and future, including records generated by third parties, as well as all education and employment records regarding Patient.

I understand that this authorization includes but is not limited to information regarding the diagnosis and treatment of drug, alcohol, Acquired Immune Deficiency Syndrome (AIDS), and psychiatric and psychological disorders including Psychotherapy Notes¹ as defined by the Health Insurance Portability and Accountability Act, 45 CFR 164.50. It also includes x-ray reports, laboratory reports, CT scans reports, MRI scans, EEGs, EKGs, sonograms, arteriograms, fetal monitor strips, discharge summaries, photographs, surgery consent forms, inform consent forms regarding family planning, admission and discharge records, operation records, doctor and nurses notes, prescriptions, medical bills, invoices, histories, diagnoses, home health records, diabetic flow sheets, electronic and digital records, psychiatric treatment and counseling records, psychological treatment and counseling records, narratives, and any correspondence/memoranda and billing information. It also includes, to the extents such records currently exist and are in your possession, insurance records, including Medicare/Medicaid and other public assistance claims, applications, statements, eligibility material, claims or claim disputes, resolutions and payments, medical records provided as evidence of services provided, and any other document or things pertaining to services furnished under Title XVII of the Social Security Act or other forms of public assistance (federal, state, local, etc.).

Pursuant to the HITECH Act, 42 U.S.C.A. §17935(e)(1), and its implementing regulations, 45 CFR 164.524(c)(4)(i), we are requesting the medical records listed above be provided to us in electronic format where available. Please be aware that the HITECH Act applies to requests by third-parties just the same as it applies to requests by patients: "if requested by an individual, a covered entity must transmit the copy of protected health information directly to another person designated by the individual." Federal Register January 25, 2013 Vol 78 No. 17, Page 5634.

¹ Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional (including social workers) documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's record.

You are authorized to release the above records to the following representatives, who have agreed to pay reasonable charges made by you to supply copies of such records.

Name

Representative Capacity (e.g., attorney, records requester, agent, etc.)

Street Address

City, State and Zip Code

I, the undersigned individual, am on notice that:

- This request for disclosure of protected health information, and any disclosure of the same pursuant hereto, is at the request of the individual.
- Any health care provider disclosing the above requested information may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs this authorization.
- This authorization can be revoked through written notice to the individual above listed entities, except to the extent that action has been taken in reliance on this authorization. The undersigned is aware of the potential that protected health information disclosed pursuant to this authorization is subject to redisclosure in a manner that will not be protected by HIPAA regulations.
- A photocopy of this authorization shall be considered as effective and valid as the original, and this authorization will remain in effect for one year from the date of this authorization.

I have carefully read and understand the above, and do herein expressly and voluntarily authorize the disclosure of the above information about, or medical records of, my condition to those persons or agencies listed above.

Signature

Date: _____

This authorization is designed to be in compliance with the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164, as well as the Health Information Technology for Economic and Clinical Health Act (HITECH), 42 U.S.C.A. §17935(e)(1).

**AUTHORIZATION FOR RELEASE OF
GAMBLING RELATED RECORDS AND ACCOUNTS
(INCLUDING NATIVE AMERICAN AND FOREIGN NATIONS)**

To: _____
Name

Address

City, State and Zip Code

This will authorize you to furnish copies of any and all gambling related records and accounts of any sort, including, but not limited to players' club accounts, wagering tickets, lines of credit, win/loss statements, tax statements, disclosures, cancelled checks, payments, correspondence, notes, contracts, statements of actual winnings or payment slips, records of compensated benefits provided by you to the claimant below, self-exclusion documents, or other documents concerning Claimant:

Name of Claimant: _____
Date of Birth: _____
Social Security Number: _____
Player's Card Number (if known): _____

Additional related records include affidavits or statements from responsible gambling officials regarding claimant's wagering activity. With regard to specific wagering transactions, the following documents are requested:

- Keno-Copies of keno tickets purchased by the claimant and validated by the gambling establishment, copies of the claimant's casino credit records, and copies of the claimant's casino check cashing records.
- Slot Machines-A record of all winnings and losses by date and time from the machines claimant played.
- Table Games: Twenty One (Blackjack), Craps, Poker, Baccarat, Roulette, Wheel of Fortune, Etc.-The number of the table at which the claimant was playing and casino credit card data indicating whether the credit was issued in the pit or at the cashier's cage.
- Bingo-A record of the number of games played, cost of tickets purchased and amounts collected on winning tickets and amounts lost on losing tickets. Supplemental records include any receipts from the casino, parlor, hall, etc.
- Racing: Horse, Harness, Dog, Etc.-A record of the races, entries, amounts of wagers, and amounts collected on winning tickets and amounts lost on losing tickets. Supplemental records include unredeemed tickets and payment records from the racetrack.

- Lotteries-A record of ticket purchases, dates, winnings and losses. Supplemental records include unredeemed tickets, payment slips and winnings statement.

You are authorized to release the above records to the following representatives, who have agreed to pay reasonable charges made by you to supply copies of such records.

Name of Representative

Representative Capacity (e.g., attorney, records requester, agent, etc.)

Street Address

City, State and Zip Code

This authorization is binding on all gambling entities, including those of Native Americans and foreign nations.

This authorization does not authorize you to disclose anything other than the documents and records requested.

This authorization is not valid unless the record requester named above has executed the acknowledgement at the bottom of this authorization. This authorization shall expire two (2) years after the date it is executed.

This authorization shall be considered as continuing in nature and is to be given full force and effect to release information of any of the foregoing learned or determined after the date hereof. It is expressly understood by the undersigned, and you are authorized and required to accept a copy or photocopy of this authorization with the same validity as through as original had been presented to you.

Patron Signature

Date

**AUTHORIZATION FOR RELEASE OF
FINANCIAL RECORDS**

To: _____
Name

Address

City, State and Zip Code

This will authorize you to furnish copies of any and all transaction histories and statements of bank accounts, credit union accounts, checking accounts, savings accounts, money market accounts, certificates of deposit, stocks, investments, retirement and pension plans, stock ownership or option plans, pay deferral or provident funds, defined contribution plans, other employee benefit plans, incentive plans, termination benefits, mutual funds, growth funds, life insurance policies, installment loans, mortgage loans, personal loans, signature loans, and any other direct indebtedness or obligation concerning the following Claimant:

Name of Claimant: _____
Date of Birth: _____
Social Security Number: _____

You are authorized to release the above records to the following representatives, who have agreed to pay reasonable charges made by you to supply copies of such records.

Name of Representative

Representative Capacity (e.g., attorney, records requester, agent, etc.)

Street Address

City, State and Zip Code

This authorization does not authorize you to disclose anything other than the documents and records requested.

This authorization is not valid unless the record requester named above has executed the acknowledgement at the bottom of this authorization. This authorization shall expire two (2) years after the date it is executed.

This authorization shall be considered as continuing in nature and is to be given full force and effect to release information of any of the foregoing learned or determined after the date hereof. It is expressly understood by the undersigned, and you are authorized and required to accept a copy or photocopy of this authorization with the same validity as through as original had been presented to you.

Claimant Signature

Date

EXHIBIT B

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

In re: Abilify (Aripiprazole) Products Liability Litigation

Plaintiff

v.

Defendant

Civil Action No. 16-md-2734

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

☐ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk_____
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 16-md-2734

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.