UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: BENICAR (OLMESARTAN) PRODUCTS LIABILITY LITIGATION	MDL 2606
THIS DOCUMENT RELATES TO ALL CASES	JUDGE ROBERT B. KUGLER
	MAG. JUDGE JOEL SCHNEIDER

CASE MANAGEMENT ORDER NO. 34 REGARDING *PRIMA FACIE* EVIDENCE OF USAGE, INJURY AND CAUSATION REQUIREMENTS FOR PENDING CASES NOT PARTICIPATING IN THE OLMESARTAN PRODUCTS RESOLUTION PROGRAM AND NEWLY FILED OR TRANSFERRED CASES

I. INTRODUCTION

This Order applies to all Plaintiffs with personal injury cases pending as of August 1, 2017 in this proceeding, and to cases subsequently filed or transferred into this proceeding. This Order requires such Plaintiffs to produce certain specified information regarding their personal injury claims. The Order does not apply to any Plaintiff who has opted to participate and enroll in the Olmesartan Products Resolution Program. Moreover, if a Plaintiff has already undertaken to meet any of the obligations set forth in this Order pursuant to this Court's previous case management orders, that Plaintiff is not required under this Order to duplicate any of those actions already undertaken. Persons who represent themselves *pro se* in this proceeding shall comply fully with all obligations required of counsel by this Order, unless otherwise stated.

II. DISCOVERY REQUIREMENTS

A. Within sixty (60) days after the final Opt-In Deadline, as may be extended under the terms of the Olmesartan Products Resolution Program Master Settlement Agreement, or, for cases filed on or after [Execution Date], 2017, within sixty (60) days from the date the case is filed in or transferred into this proceeding, Plaintiffs who are subject to this Order shall produce all of the documents and/or information described in Section IIA(1)–(4), and within 120 days the reports required by Section IIA(5)–(6). Service on Defendants by Plaintiff or his or her counsel of items set forth below shall be made by email to Susan Sharko at susan.sharko@dbr.com and Jessica L. Brennan at jessica.brennan@dbr.com.

1. All pharmacy records regarding the dispensing of drugs to the Plaintiff for the period from two (2) years prior to the date of the first diagnosis of the alleged personal injury, through two (2) years after the discontinuation of Olmesartan Products, or two (2) years after the alleged personal injury, whichever occurs last;

2. A Plaintiff Fact Sheet ("PFS") that complies with the requirements of the MDL Case Management Order No. 7 governing submission of Plaintiff Fact Sheets, entered by this Court on July 1, 2015 (the "MDL PFS Order"), and authorizations in the forms previously approved by the Court. All Plaintiffs, including Plaintiffs who have previously submitted a PFS, are required to submit updated authorizations for the release of records;

3. Medical records as follows for the period of two (2) years prior to the date of the first diagnosis of the alleged personal injury, two (2) years after the discontinuation of Olmesartan Products, or two (2) years after the alleged personal injury, whichever occurs last:

   (i) All Physicians, Medical Facilities, other Healthcare Providers and/or Other Providers who prescribed Olmesartan Products for the Plaintiff, or provided any samples of Olmesartan Products to the Plaintiff;

   (ii) All medical records relating to the Plaintiff from Plaintiff's primary care physician(s);

   (iii) All medical records relating to the Plaintiff from Plaintiff's gastroenterologist(s);

   (iv) All medical records relating to the Plaintiff from any other healthcare provider who provided treatment to Plaintiff for the personal injury alleged in his or her case;

   (v) All medical records relating to the Plaintiff from any hospital who treated Plaintiff for the personal injury alleged in his or her case; and

4. A certification signed by Plaintiff or his or her counsel (i) attesting that records have been collected from all pharmacies that dispensed drugs to, or for, the Plaintiff, as described in subparagraph A(1) above; (ii) attesting that all medical records described in subparagraph A(3) above have been collected; and (iii) attesting that all records collected pursuant to subparagraphs A(1) and A(3) have been produced, pursuant to this Order. If any of the documents described in subparagraphs A(1) and (3) above do not exist, or could not be obtained, Plaintiff or his or her counsel shall state that fact and the reason, if known, why they do not exist, or could not be obtained, in this certification, and provide a "No Records Statement" from the pharmacy or healthcare provider;

5. A report complying with Rule 26(a)(2) on general causation for the injury alleged by Plaintiff from a medical expert opining to a degree of medical or scientific certainty that Olmesartan Products pose an increased risk for the development of the type of injury alleged by Plaintiff; and

6. A report complying with Rule 26(a)(2) from a medical expert opining to a reasonable degree of medical certainty, that the use of Olmesartan Products caused or substantially contributed to the personal injury alleged by Plaintiff.

B. Plaintiffs who fail to fully comply with the requirements of this Order shall be given notice of such failure by e-mail or fax from Defendants' Lead Counsel or her designee and shall be provided thirty (30) additional days to cure such deficiency ("Cure Period"). If a Plaintiff fails to cure the deficiency within the Cure Period, Defendants' Lead Counsel or their designee shall meet and confer with Plaintiff, and if that does not result in a cure then Defendants' Liaison Counsel may file a Motion to Show Cause why that case should not be dismissed with prejudice. Plaintiffs shall thereupon have thirty (30) days to respond to the Motion to Show Cause. Any failure to respond to the Motion within the required period of time shall lead to the dismissal of the case with prejudice, except for good cause shown.

C. To the extent not expressly stated herein, nothing in this Order abrogates or replaces each Plaintiff's obligation to submit the PFS, authorizations, and other materials required under the MDL Orders.

D. Plaintiffs subject to this Order are required to provide full and complete information in response to each requirement of this Order, and are required to supplement or correct their responses required by this Order as necessary, in accordance with Federal Rule of Civil Procedure 26(e).

THUS DONE AND SIGNED in Camden, New Jersey, this 1st day of August, 2017.

HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT COURT