

FILED

NOV 13 2019

JOHN C. PORTO, J.S.C.

IN RE PROCEED MESH LITIGATION
 (Proceed® Surgical Mesh and Proceed®
 Ventral Patch Hernia Mesh)

: SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION: ATLANTIC COUNTY
 : MASTER CASE NO. ATL-L-794-19
 : CASE NO. 630

: Civil Action

: **AMENDED CASE MANAGEMENT ORDER**
 : **NO. 4 (Records Collection)**
 : **(This Order Supersedes CMO 4 entered on**
 : **August 20, 2019**

This matter having been opened to The Court by the parties; and the parties having indicated they have no objection to the form and entry of the within Order; and good cause appearing;

IT IS on this 13th day of November, 2019,

ORDERED:

This Order establishes the procedures for the Plaintiffs to access the records the Defendants collect pursuant to any signed authorizations provided by Plaintiffs to the Defendants' counsel to obtain from third parties certain medical records. This Order is not intended to and does not create any obligation for any Plaintiff to access any of the records collected by Defendants.

A. PLAINTIFFS' ACCESS TO RECORDS THE DEFENDANTS COLLECT

1. Plaintiffs' counsel shall have the opportunity to receive notice, and to review and obtain copies of records collected by the Defendants, by the means specified in Section B below,

through the use of a record copy service vendor. *Litigation Management, Inc.* (hereinafter "*LMI*") has been retained by Defendants Johnson & Johnson and Ethicon, Inc. as the record copy service vendor to perform the service.

2. Upon establishment of a *User Account* by counsel representing a particular plaintiff(s), as set forth in Section B below, the authorized user will receive E-mail alerts on each date that new records for the Plaintiff(s) associated with that account are posted to the on-line repository for access by the counsel representing such Plaintiff(s).

3. The E-mail alert will identify Plaintiff(s)' name(s), and the name(s) of the records provider(s), the type of record, and the bates label range for the records.

4. Plaintiffs shall have the ability, but not the obligation, to obtain copies of the records that are retrieved by Defendants through *LMI*. The Fees to obtain copies of the records that are retrieved are set forth on Exhibit "A" attached hereto, and shall not increase during the course of this litigation.

B. ESTABLISHMENT OF USER ACCOUNTS

1. Plaintiff(s)' counsel may establish *User Accounts* by contacting *LMI* at NJHerniamesh.LMI@lmiweb.com. Plaintiff(s)' counsel will be required to provide:

a. A list of the name(s) and E-mail address(es) of each individual in the law firms representing Plaintiff(s) who are authorized to access the Record Repository, so that *User Accounts* can be established for the law firm;

b. A valid credit card [MasterCard, Visa, or American Express] to be used for the purchase of any plaintiff(s)' records. The credit card will be charged in accordance with the fee schedule in the attached Exhibit A;

c. A listing of the Plaintiff(s) for whom those counsel are attorneys of record,

including for each individual person the following information: last name, first name, middle name and maiden name if applicable, docket number, case caption, and jurisdiction where the case is currently pending. If a Plaintiff is representing an estate, the decedent as well as the estate administrator/representative must be identified. If the Plaintiff has a common name, an additional identifier may be requested to ensure access is granted only to that specific person. This list must be updated by Plaintiffs' counsel with *LMI* during the first week of each month with respect to any cases newly filed during the prior month and/or any corrections that may need to be made;

d. The name, title, and E-mail address of the primary contact person for Plaintiff(s)' counsel for interactions with *LMI*; and,

e. The name and E-mail address of the person to whom receipts for credit card charges should be directed.

f. Establishing a user account with *LMI* does not obligate Plaintiffs' counsel to obtain any records through *LMI*.

C. MENTAL-HEALTH RELATED RECORDS

1. The following provisions pertain only to receipt of mental-health related care records, whether by a psychiatrist or psychologist or other readily identifiable mental health specialist. Upon receipt of mental-health related care records, *LMI*, shall:

a. Notify both Parties (Defendants and the counsel for that individual Plaintiff by E-mail (not attaching the records)) that mental-health related care records have been received;

b. Quarantine the records for a period of time to afford Plaintiff(s)' counsel an opportunity to obtain and review the records (using the process and Fees to retrieve copies of

the records as set forth on Exhibit "A" attached hereto). During the Quarantine, *LMI* shall not release or give access to the Defendants of any of the mental-health related care records;

c. Plaintiff(s)' counsel shall have ten (10) days to assert a recognized privilege or other legal protection prohibiting the disclosure of the records and notify both *LMI* and the requesting Defendants, with an appropriate privilege log;

d. Absent notification within ten (10) days of the assertion of such a privilege, *LMI* shall then provide the records to the requesting Defendants.

2. If the Plaintiff provides a notification within ten (10) days of the assertion of such a privilege or other legal protection prohibiting the disclosure of the records, with an appropriate privilege log, *LMI* shall maintain the Quarantine until further Order of this Court or agreement of the parties via written agreement signed by counsel for Plaintiff and Defendants, and/or withdrawal by Plaintiffs' counsel of the assertion of a privilege or other legal protection prohibiting the disclosure of the records.

D. INADVERTENT OR MISTAKEN DISCLOSURE OF PRIVILEGED DOCUMENTS. "CLAWBACK" PROCEDURE.

Notwithstanding any other provision or paragraph of this Order, the procedure regarding notification and "clawback" of inadvertent or mistaken disclosure of privileged or otherwise protected documents or information set forth in Paragraph 14 of the Confidentiality and Protective Order (CMO No. 3) shall apply equally to the inadvertent or mistaken disclosure of Plaintiffs' records produced to or otherwise obtained by Defendants which are privileged or otherwise legally prohibited from disclosure.

The within Amended Case Management Order shall apply to each member related case previously transferred to, or filed in this Court. In cases subsequently filed in this Court, it shall be the responsibility of the Parties to review and abide by all pretrial Orders previously entered

by the Court, as amended. The Orders may be assessed through the New Jersey State Court Electronic Filing System.



Hon. John C. Porto, J.S.C.

EXHIBIT A

LMI PRICING	
OPPOSING COUNSEL REPOSITORY	
Email notification of records received is included and will be issued nightly.	
A per record fee for each record downloaded will be assessed to the credit card on file as the time of purchase.	
User Set-Up Fee	No Cost
Records Received Notification Email Fee	No Cost
Record Review/Download Fee - Large Fee is assessed per record set over 100 pages	\$10.00
Record Review/Download Fee-Small Fee is assessed per record set under 100 pages	\$5.00