FILED

AUG 27 2020

JOHN C. PORTO, J.S.C.

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

CASE NO. 630

Civil Action

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

CASE MANAGEMENT ORDER NO. 13 (PSYCHIATRIC AUTHORIZATIONS)

This matter having been opened to the Court on the record at a Case Management Conference held on June 11, 2020, in the presence of the attorneys for the Plaintiffs and the attorneys for the Defendants; and it appearing that The Court (per Judge Porto) on December 6, 2019 entered a Second Revised Case Management Order No. 6; and the Court having heard the arguments of counsel on the record in support of and in opposition with respect to psychiatric authorizations; and the Court having considered the written submissions of all parties with respect to psychiatric authorizations; and the Court having placed an oral opinion on the record; and good cause appearing;

IT IS on this 27th day of ~~July~~ August, 2020

ORDERED:

The present dispute concerning the obligation of Plaintiffs to supply psychiatric authorizations will be decided by the Court on an omnibus MCL-wide basis and not by filing of individual motions in individual cases.

This Order establishes the procedures related to obtaining psychiatric authorizations and associated records, where applicable. This Order applies to all cases transferred to this Court, including those cases subsequently transferred and all cases directly filed in this MCL. As used in this Order, "Proceed mesh" shall include all iterations of the Proceed hernia mesh product

line, including the "Proceed Ventral Patch" product. To the extent this Order conflicts with any previous Order, this Order supersedes and governs.

I. PSYCHIATRIC AUTHORIZATIONS RELATED TO THE INITIAL DISCOVERY POOL

A. Applicability to Initial Discovery Pool Plaintiffs

For any case selected as part of the Initial Discovery Pool pursuant to this Court's June 16, 2020 CMO No. 12 [Cases Selected for Individual Discovery], the following Initial Discovery Pool Plaintiffs are required to serve duly executed psychiatric authorizations:

(1) Plaintiffs who answer "Yes" to Question VI (3) on the Plaintiff Fact Sheet.

(2) Plaintiffs whose operative complaint alleges claim(s) for emotional distress, mental anguish, mental pain and suffering and related claims (hereinafter collectively referred to as "emotional distress").

If a Plaintiff's operative complaint alleges claim(s) for emotional distress but that Plaintiff no longer wishes to pursue claim(s) for emotional distress, that Plaintiff is not required to submit a psychiatric authorization; provided, however, that Plaintiff states his or her intention to withdraw the claim(s) of emotional distress in writing contemporaneous with the submission of the Plaintiff Fact Sheet, or within 20 days hereof. A subsequent case management order will govern the amendment of Plaintiffs' complaints in the event a case is selected as a Trial Pool Case pursuant to CMO No. 12.

In the event a Plaintiff withdraws his or her claim(s) for emotional distress pursuant to this Order, that Plaintiff may only later pursue a claim of emotional distress upon a showing of a change in circumstances from the date the Plaintiff withdrew the emotional distress claim that this Court finds is good cause to amend Plaintiff's complaint.

B. Procedure Related to Psychiatric Authorizations and Related Records

The following procedure will apply to the psychiatric authorization submitted pursuant to Section I(A) of this Order and the records obtained pursuant thereto:

(1) Duly executed psychiatric authorizations will allow for retrieval of records for a time period of 8 years prior to the Proceed mesh implant to the present.

(2) Any records that pertain to psychiatric related care, whether by a psychiatrist or psychologist, shall first be available to counsel for the Plaintiff who shall have 20 days to assert a recognized discovery objection and/or privilege and notify both the vendor and counsel for the requesting Defendants, with an appropriate documentation of the discovery objection with specific reference(s) to page(s) and/or portion(s) thereof and/or a privilege log, in accordance with Case Management Order No. 5 [Records Collection].

(3) In the event Plaintiff's counsel objects to the production of all or portions of a psychiatric record, the parties will meet and confer as to whether an agreement can be reached as to which records Defendants are entitled.

(4) If the parties cannot agree as to the production on all or portions of the psychiatric records, Plaintiff shall file a motion for a protective order as to why the records should not be produced.

(5) Absent a written objection as set forth in Paragraph I(B)(2) to the production of psychiatric records from Plaintiff, after 20 days, the unredacted records shall be provided to the requesting Defendants.

(6) If there is an objection to the production of psychiatric records, the records shall not be produced absent an agreement of the parties or upon this Court's order.

II. PSYCHIATRIC AUTHORIZATIONS RELATED TO NON-DISCOVERY POOL PLAINTIFFS

For any case **not** selected as part of the Initial Discovery Pool, the following procedures regarding psychiatric authorizations apply:

A. Procedure for All Non-Discovery Pool Plaintiffs

Within 30 days of the date of this Order, or otherwise becoming subject to this Order, for any plaintiff who responded to question IV(A) of the Plaintiff Profile Form with respect to any

emotional or psychological injuries and/or any Plaintiff whose operative complaint alleges claims for emotional distress, counsel for Plaintiff shall send the Plaintiff psychiatric authorizations in conformance with Section I(B)(1) of this Order to be executed by Plaintiff.

After receiving the duly executed psychiatric authorization from Plaintiff, counsel shall endeavor to order all relevant psychiatric records from 8 years prior to the Proceed mesh implant. Counsel for Plaintiffs under this Section shall make a good faith effort to ensure that, not later than 120 days from the date of receiving the duly executed authorization from Plaintiff, the records are received from the facility to which the authorization was sent.

B. If Selected as Future Discovery Pool Plaintiff

If a Plaintiff under this Section is selected as a Discovery Pool Plaintiff in the future, whether by replacement or subsequent order, and that Plaintiff answers "Yes" to VI(3) on the Plaintiff Fact Sheet and/or in the complaint claims emotional distress, any records obtained from the psychiatric authorizations shall first be made available to counsel for the Plaintiff, who shall have 20 days to object to the production of all or portions of the records, providing the basis for such objection. If Plaintiff's counsel objects to producing all or part of the psychological records, counsel for Plaintiff shall inform counsel for Defendants using the procedure set forth in I(B)(2-6).

If a Plaintiff has not followed the procedures outlined in Section II of this Order, Plaintiff may not pursue counts for emotional distress absent a showing of a change in circumstances that this Court finds is good cause to amend the Plaintiff's complaint.

HONORABLE JOHN C. PORTO, J.S.C.