

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: PROTON-PUMP INHIBITOR PRODUCTS LIABILITY LITIGATION (NO. II) This Document Relates to ALL ACTIONS	MDL No. 2789 Case No.: 2:17-md-2789 (CCC)(MF)
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**CASE MANAGEMENT ORDER NO. 45
(Regarding Health Care Provider Discovery Depositions)**

The Court hereby issues the following Case Management Order to govern the case-specific health care provider discovery depositions in Bellwether Discovery Cases.

I. SCOPE AND APPLICABILITY

1. This Order relates to the discovery depositions of case-specific health care providers (hereinafter “HCP Depositions”) to be taken in connection with the nineteen (19) Bellwether Discovery Cases selected pursuant to Case Management Order Nos. 33 and 36 (hereinafter “Bellwether Discovery Cases”) and any cases subsequently designated as Bellwether Discovery Cases.

2. This Order does not apply to the depositions of current and former employees of Defendants who reside in the United States or Bellwether Plaintiffs, their family members, and their non-family caregivers, as such depositions are governed by Case Management Order No. 40.

3. Although this Order governs all HCP Depositions noticed before this Court, the parties may stipulate in writing to deviations from the arrangements mandated herein. The

parties agree that HCP depositions scheduled, noticed and taken prior to entry of this Order are sanctioned by, and subject to, the terms of this Order.

4. All other terms of Case Management Order No. 40 remain in effect unless they conflict with the terms of this Order.

II. NOTICES, SCHEDULING, LOGISTICS, AND REMOTE DEPOSITIONS

5. Scheduling. Counsel are expected to cooperate and coordinate in good faith the prompt scheduling of all HCP depositions requested by Plaintiffs and Defendants. Plaintiffs will coordinate with HCPs to schedule the depositions the parties intend to take in each Bellwether case to occur at mutually-agreeable dates and times. Specifically, a designated liaison or liaisons for the Plaintiffs shall coordinate the scheduling of the depositions by securing available dates for each deposition from a designated liaison for each of the Defendants, and the office of each individual HCP. Plaintiffs' liaison will advise Defendants' liaison at the time each deposition is scheduled of the respective HCP's (1) location at the time of the deposition; (2) hourly rate; and (3) stated preferences regarding payment, if any. Plaintiffs' liaison shall coordinate the scheduling of the HCP, the court reporter, and the location of the deposition (if deposition is not taken remotely). Plaintiffs' liaison will communicate with HCP deponents (and their respective offices) to deliver the deposition notice to the HCP and confirm that the HCP deponent intends to comply with the notice, and has all information/training/equipment necessary to access the virtual deposition platform. Where after reasonable, good-faith efforts, Plaintiffs' liaisons are unable to obtain deposition dates for a specific HCP, Plaintiffs' counsel shall notify Defendants of such circumstances. Thereafter, Defendants are authorized to contact the HCP's office for scheduling purposes

only and/or to issue a subpoena for that deposition. In such circumstances, Defendants shall work cooperatively with Plaintiffs' liaisons to set depositions for mutually-agreeable dates and times.

6. Time. All HCP Depositions shall be noticed for and conducted during normal business hours within the witness's local time zone or at hours convenient to the HCP. Parties are expected to grant reasonable accommodations on scheduling and timing of all depositions.

7. Allocation of Time. Unless a party specifically waives the necessity of a deposition at the time the deposition is scheduled, or as otherwise agreed by the parties, the time available for any HCP Discovery Deposition shall be allocated between the parties at a ratio of 50% of the available time to Defendant(s) and 50% of the available time to Plaintiff(s). If a party waives the necessity of a deposition, the waiving party is allocated only 30% of the available time. Plaintiffs' liaison shall inform opposing counsel of any limitations in the HCP's schedule that would result in a 2-hour or less deposition, and shall do so sufficiently in advance of the deposition to permit the parties to meet and confer on a different allocation of time as necessary. Any disputes regarding the length of time needed for a deposition or depositions scheduling shall be resolved by the Court.

8. Priority of Questioning. The parties have agreed to handle priority of questioning for HCPs during the bellwether discovery phase as follows:

a. Prescribers. Plaintiffs have picked the first 8 cases in which to have priority and Defendants have priority in the remainder, as enumerated in the parties' correspondence from October 2 – 5, 2020, which is incorporated by reference into this Order and set forth in the attached as Exhibit A. However, if Plaintiffs dismiss a case

in which Defendants have priority, the last case picked by Plaintiffs for priority will become a defense priority case and so forth for each case dismissed, the numerical order of which is enumerated in the parties' correspondence of October 12, 2020, which is incorporated by reference into this Order and set forth in the attached Exhibit A.

b. Treators. Defendants have picked the first 8 cases in which to have priority and Plaintiffs have priority in the remainder, as enumerated in the parties' correspondence from October 2 – 5, 2020, which is incorporated by reference into this Order and set forth in the attached Exhibit A. However, if Plaintiffs dismiss a case in which Defendants have priority, the last case picked by Plaintiffs for priority will become a defense priority case and so forth for each case dismissed.

c. Other HCPs. Defendants have picked the first 8 cases in which to have priority and Plaintiffs have priority in the remainder, as enumerated in the parties' correspondence from October 2 – 5, 2020, which is incorporated by reference into this Order and set forth in the attached Exhibit A. However, if Plaintiffs dismiss a case in which Defendants have priority, the last case picked by Plaintiffs for priority will become a defense priority case and so forth for each case dismissed.

9. Fees. The parties agree to split all costs and fees of the HCP, videographer and court reporter equally unless a party specifically waives the necessity of a deposition, in which case the waiving party only pays for a transcript, manuscript and video copies, and the party requesting the deposition will pay all remaining fees/costs. However, no party shall be required to compensate an HCP for preparation time unless otherwise agreed in advance

between/among the parties or between a party and the HCP. Any fees charged by an HCP for depositions must be customary and reasonable, and the parties shall be notified of applicable rates, and method of payment, in advance. The parties will pay each HCP for his or her full reserved time prior to each deposition in the manner requested by the HCP.

10. Location and Remote depositions. In light of the ongoing pandemic due to COVID-19, the circumstances of which are evolving and may require the Court to revisit this issue periodically and make any necessary adjustments, and subject to all of the conditions below, the discovery depositions of HCPs pursuant to this Order will be noticed to take place remotely via video or internet video conference technology unless otherwise agreed by the parties.

a. The deposition notice shall include the date, time, and location(s) (city and state) from which the HCP, the court reporter, and the videographer will attend, respectively. All notices for remote depositions will also identify the vendor (hereinafter “Remote Deposition Vendor”) that will host and record the deposition and contain a general description of how those attending may access the remote connection being utilized (*e.g.*, Zoom, WebEx).

b. During the deposition, full and complete copies of deposition exhibits must be provided to the HCP-deponent and all counsel who are attending the deposition remotely through the file sharing software (with download disabled for the witnesses). An HCP-deponent may be required to use a keyboard, mouse, or other similar means to open and/or advance the pages of an exhibit. The fact that an HCP was provided with an electronic copy of an exhibit will be an insufficient basis to object to the

admissibility of that exhibit at trial. During the deposition, the remote deposition technology must allow counsel to display and annotate exhibits for the HCP-deponent, add and remove exhibits, and change the order in which the exhibits are presented to the HCP.

c. During the deposition examination, no person attending the deposition shall be permitted to communicate with the HCP-deponent by any means not recorded in the same manner as the deposition itself (e.g., no text or email exchanges with the witness). However, the HCP's counsel, to the extent the HCP is represented at the deposition, may communicate with the HCP, including telephonically, by other electronic means, or directly if he or she is present with the HCP, during breaks, consistent with Federal Rule of Civil Procedure 30(c)(1).

d. Technical difficulties, including but not limited to pauses, lags, and/or interruptions in internet connection, shall be addressed as they would be in any in-person deposition. The parties shall go off the record and attempt to resolve the issue. Technical difficulties shall not result in waiver of objections by any party. If any pauses, lags, and/or disruptions are persistent or prolonged, the parties should consider rescheduling the remote deposition for a later date.

III. EX PARTE COMMUNICATION

11. To the extent counsel for Plaintiff meets with any prospective HCP and/or her or his counsel before the proposed deposition (whether in person, remotely, by phone, or by written correspondence), Plaintiffs' counsel must provide to opposing counsel, by the earlier of at least 48 hours before that HCP's deposition or immediately after meeting with the HCP

if the meeting takes place less than 48 hours before the deposition, the following: (1) a disclosure of the fact that such communication occurred and; (2) either electronic copies of all materials shared with the HCP or the specific bates-numbers of such materials if previously produced, with the exception of that HCP's records for the particular plaintiff.

IV. INCLUSION OF THIS ORDER WITH DEPOSITION NOTICES

12. This Order, in its entirety, must be attached to any non-party subpoena or notice of deposition issued pursuant to this Order.

SO ORDERED:

Dated: October 22, 2020



CLAIRE C. CECCHI
United States District Judge