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IN RE: PELVIC MESH/GYNECARE  
LITIGATION

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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

CASE NO. 291

MASTER DOCKET NO.: BER-L-11575-14

CIVIL ACTION

UPDATED CASE

MANAGEMENT ORDER #79

(Remote Deposition Protocol for CMO  
74 Cases)

This Order supersedes CMO #79

entered on January 21, 2022. All  
prior orders remain in full force and  
effect except as modified by this Order.

**FILED**

APR 12 2023

RACHELLE L. HARZ  
J.S.C.

THIS MATTER having been reassigned to the Bergen County Vicinage, from Atlantic County, pursuant to the Supreme Court's Order of October 31, 2014; the Court having conducted a Case Management Conference; counsel appearing; for good cause shown and for the reasons set forth on the record;

IT IS on this 12<sup>th</sup> day of April, 2023, **ORDERED** as follows:

**I. Applicability**

1. The pre-Covid protocol in this MCL was that depositions of plaintiffs are to take place in person in New Jersey, absent agreement of the parties or Order of the Court. CMO 79 was entered to ensure a fair process for the taking of remote depositions during the Covid pandemic. With Covid statistics continuing to decline and former restrictions continuing to lift, the pre-Covid protocol for depositions of plaintiffs is reinstated: depositions of plaintiffs are to take place in person, in New Jersey. If, however, a plaintiff has concerns related to Covid, or a diagnosed medical or physical condition that would prevent the plaintiff from traveling to New Jersey for deposition,

the parties shall meet and confer to determine if the deposition should be converted to a remote deposition and subject to the provisions of this protocol. If the parties cannot agree, any dispute may be presented to the Court.

2. For depositions that will be taken remotely, this protocol applies. Depositions taken in connection with the cases to be worked up for discovery, including those pursuant to CMO 74 and CMO 84, that may be completed remotely, may be conducted fully remotely (all parties, counsel, court reporters, etc. remote from one another) or, partially remotely, with some remote and some in person, as long as all in-person participants are able to be seen at all times they are present with the witness during the questioning. If a plaintiff (either by agreement or Court Order) cannot travel to New Jersey and intends to have her counsel present in the same room for the deposition, counsel for the defense has the right also to be present in the room. Any disagreements regarding the appropriateness of conducting depositions in person but not in New Jersey may be raised with the Court if the parties cannot reach agreement regarding any reasonable concerns that may be raised.

3. This Order shall apply to all parties and counsel for all parties. In the event that a deposition is requested of a treating physician or other third party, the parties may conduct the deposition in person where the witness is located or remotely consistent with this Order. If the third party refuses to comply with any provision of the protocol established in this Order, the parties shall meet and confer in good faith to determine the appropriate manner to conduct the deposition while maximizing safety precautions. Any disagreements regarding the manner in which the deposition is to be taken may be raised with the Court.

## **II. In Person Depositions**

1. A witness may be deposed in person rather than by remote means if the witness chooses to do so. If a party seeks to conduct an in-person deposition, and there is an objection, the parties may bring the issue to the Court's attention for resolution if necessary. To the extent any medical treater or other third-party witness chooses not to proceed in person, that person shall be permitted to participate remotely in accordance with this protocol.

2. Any in-person deposition must be conducted in accordance with any applicable mandates regarding COVID-19 and health, social distancing, and travel-related orders and mandates arising therefrom that are current as of the date of the deposition.

3. If requested by any party attending an in-person deposition, reasonable efforts should be made to conduct the deposition such that all participants in the room are seated at least six feet apart at all times. To the extent that the court reporter, videographer, interpreter, or tech support request to participate remotely to reduce the number of people in the room the parties should make reasonable efforts to do so.

4. To the extent the use of personal protective equipment is desired by any participant, each person attending the deposition must procure his/her own face mask and hand sanitizer (should the person desire to have access to it) and use them accordingly. If requested by any in person participant, masks shall be worn at all times by anyone in attendance, except for the witness, examining attorney, and on-record defending attorney.

## **III. Service/Platform for Remote Depositions**

1. Golkow Global Litigation Services (“Golkow”) will serve as the preferred court reporting service. Unless otherwise agreed by the parties, Golkow shall provide the remote deposition videoconferencing platform through which the depositions will be conducted. Unless otherwise agreed, all remote depositions will be conducted through this platform.

2. A fully remote deposition is defined to address depositions in which all parties, including the attorneys, the court reporter and videographer (to the extent a videographer is necessary), will appear remotely. If there is a reasonable objection to proceeding as proposed, whether fully remotely, partially remotely, or in person, and the parties cannot agree, either party may present the matter to the Court for determination.

3. Golkow shall provide an additional service employee for purposes of IT support, troubleshooting, etc., unless the parties otherwise agree that such additional personnel is not necessary.

4. Where the deponent is remote, the deponent will be responsible for having adequate, functioning and sufficient technology to participate in the deposition (adequate internet connectivity, webcam, microphone, computer with ability for split screen, etc.). The party defending the witness shall coordinate with the witness and Golkow in advance of the deposition to ensure the technology is sufficient and functional. The parties should perform a “test run” of the equipment and technology no later than 2 business days in advance of the deposition. Should the deponent require renting additional hardware and/or software to ensure sufficient connectivity and ability to participate without technological issues, Golkow will be the preferred supplier of

such equipment. The party noticing the deposition shall pay the costs associated with any such technological needs.

5. The remote deponent is not permitted to utilize any communicative device during the time of the questioning during the deposition for any purpose(s) other than responding to deposition questions on the record, interacting with the court reporter or examining counsel, or viewing exhibits displayed electronically. During breaks in testimony, counsel defending the witness may communicate with the witness directly, via telephone, or other means, consistent with the New Jersey Court Rules and case law regarding communications with counsel during depositions. Any and all prohibitions regarding substantive conversations with the witness that would be in effect during an “in person” deposition will remain applicable.

6. Any time spent resolving or attempting to resolve technical difficulties that occur during a remote deposition will not count against the time a party has to depose a witness where time limits are agreed to, under any agreed upon deposition protocol, any applicable Court Order, or any time limitations imposed by a health care provider witness. If counsel determines in good faith that the technical difficulties pose an unreasonable obstacle to proceeding with the deposition, the parties will work in good faith to immediately reschedule the deposition with appropriate technical support.

#### **IV. Swearing of the Witness/Officer Administering Oath in Remote Depositions**

1. The parties agree that the court reporter may administer the oath remotely, and any oaths administered remotely will satisfy the requirements of New Jersey Court Rule 4:14-3.

2. To the extent any deposition is to be taken of a deponent appearing remotely outside of the United States, the parties shall meet and confer regarding the manner and procedure by which the oath may be administered to the foreign deponent if any issue is raised.

3. Any oath administered remotely shall be deemed to have the same effect as an oath administered in person.

4. All persons participating in and/or observing a remote deposition shall be identified on the record.

#### **V. Screen Stipulations for Remote Depositions**

1. The attorneys on record as conducting and defending the deposition shall appear onscreen, of which "onscreen" shall mean the attorney will have sufficient technology that allows the on-record attorneys and witness to visualize them in an individual window at all times on record. The participants shall make every effort to ensure that their full legal name and, in the case of attorneys, the law firm name, are accurately reflected in association with the video/image feed. The witness shall likewise appear onscreen. Attorneys will not be recorded. Counsel taking the deposition may also display deposition exhibits onscreen. If a counsel is participating in the deposition in-person for an otherwise remote deposition, the in-person counsel shall appear onscreen.

2. If the deposition is shown/played to a fact finder (including juries), the recordings of the deponent will be shown to the fact finder, subject to the positions of the parties, and any necessary rulings from the Court, as if the deposition was conducted via video pre-Covid.

3. The witness shall make every effort to provide his or her testimony in an environment with minimal background distractions. An agreed upon backdrop supplied by Golkow and/or artificial background may be used when appropriate. Any costs of supplying a background will be charged to the noticing attorney.

**VI. Marking and Using Exhibits in Fully or Partially Remote Depositions**

1. Use of exhibits at a fully or in part remote deposition can include, but are not limited to the following:

- a. Electronic exhibits that are shared/marked as needed through Golkow's remote deposition platform.
- b. Hard copies of exhibits sent to Golkow and the witness in advance of the deposition. Should examining counsel elect hard copy transmission, the method of transmission of exhibits will be agreed to by the parties in advance of the deposition.

2. Regardless of the method utilized by counsel, a copy (print or electronic) of any exhibits used, must be made available to opposing counsel at or before the time they are introduced. Counsel shall ensure that exhibits are ready to be shown to the witness. Counsel should endeavor to send voluminous documents to Golkow in advance of the deposition as needed, and should otherwise transmit exhibits in an expeditious fashion to avoid unnecessary delays during the deposition.

3. Should counsel admit exhibits electronically, counsel shall ensure that technology enables the exhibits to be displayed electronically and enable a witness to scroll up or back in the document and/or ask the technician to scroll so that the witness may see some or all of the document before or during examination about the exhibit.

4. In the event exhibits are introduced at deposition, objections are to be made or are to be preserved as if the deposition was conducted fully in person.

5. All documents remaining in possession of the witness must be returned pursuant to protective order at the close of the deposition, if required by the protective order.

6. Documents requested of the witness will be furnished consistent with any applicable deposition protocol or deposition notice served. To the extent there is no applicable deposition protocol to the witness, documents requested of the witness will be furnished to the examining counsel at least 10 days before the deposition, unless not practicable, in which case the parties shall meet and confer to avoid undue prejudice to any party.

## **VII. Use of Remote Deposition and Trials**

1. The parties may inform the jury/finder of fact that these depositions were taken by Zoom conference/remotely rather than in person, and the Court will give its standard instruction regarding videotaped depositions.

2. The remote deposition will record the witness if the examining party so directs and if the Deposition Notice or Cross-Notice included a request for the deposition to be videotaped, or if the defending party so requests in the absence of a request by the examining party.

3. Remote depositions may be used at a trial or hearing in the same manner as an in-person deposition may be used at a trial or hearing.

4. The parties will not be permitted to object to use of video recordings at a trial or hearing on the basis that the deposition was taken remotely unless the quality of



the video or recording is poor or otherwise incomprehensible so that playing the same at trial would be either prejudicial to a party or unfair to the factfinder. Should the producing or examining party believe that a video recording would fit these circumstances, notice must be given to opposing counsel within a reasonable time in advance of said trial or hearing so that sufficient time is left to produce the witness for a second deposition or, if feasible, live at trial.<sup>1</sup>

5. The parties reserve all other objections to the use of any testimony or exhibits at trial.

**VIII. Miscellaneous**

This Order may be amended or modified at any time by agreement of the parties or Order of the Court.

  
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RACHELLE L. HARZ, J.S.C.

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<sup>1</sup> Nothing in this section will prohibit a party from petitioning opposing counsel and/or the Court for a witness's live testimony at the time of trial.