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**ATLANTIC COUNTY  
LAW DIVISION**

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Ethicon Inc. and Johnson & Johnson

In re PELVIC MESH / GYNECARE LITIGATION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION ATLANTIC COUNTY

CIVIL ACTION

Case No. 291 CT  
Master Case 6341-10

Hon. Carol E. Higbee, P.J. Cv.

**ORDER GRANTING IN PART AND  
DENYING IN PART ORDER TO  
SHOW CAUSE ON DEFENDANTS'  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER REGARDING  
*EX PARTE* CONTACTS WITH  
TREATING PHYSICIANS AND  
PLAINTIFFS' MOTION FOR  
PROTECTIVE ORDER**

THIS MATTER having come before the Court by way of Order to Show Cause, dated November 6, 2013, on the Motion for a Temporary Restraining Order by Defendants Ethicon Inc. and Johnson & Johnson regarding the *ex parte* contacts of Plaintiffs' counsel with Plaintiffs' treating physicians, and Plaintiffs' Cross-Motion for Protective Order; and the Court having considered the papers submitted in connection with the motion, and heard oral argument on

November 12, 2013; and the Court having issued a written decision on December 3, 2013, and for good cause shown;

IT IS on this 14<sup>th</sup> day of April, 2014,

ORDERED that Defendants' Motion for a Temporary Restraining Order and Plaintiffs' Cross-Motion for Protective Order are granted in part and denied in part as set forth below; it is

ORDERED that Plaintiffs' counsel shall limit the scope of pre-deposition *ex parte* communications with Plaintiffs' treating physicians to discussions of the facts of the treatment that the given treating physicians provided to the given Plaintiff and to the Plaintiff's medical condition and medical history. All pre-deposition *ex parte* discussions by Plaintiffs' counsel shall be limited to the facts of the specific patient's history and treatment, the doctor's understanding of and about the products used on the patient at the time they were used, and opinions on prognosis, diagnosis and causation as it relates to the particular patient/plaintiff; and it is further

ORDERED that Plaintiffs' counsel are prohibited from having pre-deposition *ex parte* discussions with Plaintiffs' treating physicians about

- (1) the physicians' understanding of the risks and benefits of pelvic mesh products, except as to what they knew and understood when they used a particular product on the particular patient;
- (2) the physicians' past and present use of pelvic mesh products in general;
- (3) the risk and benefit information the physicians received from agents or sales representatives of the Defendants;
- (4) scientific literature, seminars, warnings or other tools the physicians used to obtain knowledge about the risks and benefits of the products; and
- (5) theories of liability of the Plaintiffs in the pelvic mesh litigation;

and it is further

ORDERED that in pre-deposition *ex parte* discussions with Plaintiffs' treating physicians, Plaintiffs are prohibited from showing the treating physicians any portions of any trial transcripts or videos thereof or any depositions or internal documents produced by Defendants, or any scientific studies or literature prior to the treating physician's deposition. Plaintiffs' counsel may show these documents to the treating physicians and question them at their depositions about these materials if the questions are relevant to the case; and it is further

ORDERED that Defendants' shall advise all sales people, detail people or other representatives of the Defendants are prohibited from discussing with any treating physicians prior to their depositions the pelvic mesh litigation, defense theories in the pelvic mesh litigation, or any pelvic mesh product that they are not currently selling or attempting to sell to the doctor, and it is further

ORDERED that no one working for the defendant shall encourage or suggest that any doctor or scientist or any other individual contact the treater or engage in any discussions with the treater regarding the pelvic mesh litigation, defense theories in the pelvic mesh litigation, or any pelvic mesh product that they are not currently selling or attempting to sell to the doctor, and it is further

ORDERED that the limitations on pre-deposition *ex parte* communications set forth in this Order do not apply to treating physicians whom either Plaintiffs or Defendants have retained as expert witnesses, and it is further

ORDERED that Defendants' request to compel discovery, embodied in the Motion for a Temporary Restraining Order, is denied, except that Defendants are permitted to ask treating physicians during their depositions about (1) whether they engaged in *ex parte* communications

with Plaintiffs' counsel or their staff, and if so, (2) the location, time and duration of these *ex parte* communications; (3) the identities of the participants in these *ex parte* communications; and (4) the documents and other materials Plaintiffs' counsel or their representatives showed or sent to the treating physicians during these *ex parte* communications, and it is further

ORDERED that Plaintiffs' cross-motion for protective order is granted, and Defendants' requests for information and documents regarding *ex parte* contacts with treating physicians, including (a) the names of all treating physicians with whom *ex parte* communications have taken place; (b) the time, place and duration of all such *ex parte* communications; (c) each person who participated in the *ex parte* communications; and (d) copies of all documents or other materials that Plaintiffs' counsel shared with Plaintiffs' treating physicians, be and hereby are quashed and denied, although Defendant can request documents be produced at the deposition by the physician and can question the physician regarding the documents but Plaintiff's counsel need not produce the documents in advance of a treating physician's deposition

  
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Hon. Carol E. Higbee, P.J. Civ.

Opposed

Unopposed

The Court's findings of Fact and Conclusions of Law Were Placed on the Record on the 3<sup>rd</sup> Day of December, 2013, and were.

(X) Written

( ) Oral

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