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and Ethicon, Inc.

**FILED**

AUG 03 2012

Carol E. Higbee, P.J.C.

IN RE PELVIC MESH/GYNECARE  
LITIGATION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, ATLANTIC COUNTY

CIVIL ACTION

CASE NO. 291 CT

Master Case No. 6341-10

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

**ORDER VACATING AND SUPERSEDING THE  
MAY 26, 2011 ORDER REGARDING THE  
RETENTION OF EXPERT WITNESSES**

THIS MATTER having been brought before the Court by Defendants Ethicon, Inc. and Johnson & Johnson ("Defendants"), through its counsel Riker, Danzig, Scherer, Hyland & Perretti LLP, seeking the entry of an Order vacating the May 26, 2011 Order regarding the retention of expert witnesses and superseding the provisions of the May 26, 2011 Order in accordance with the June 1, 2012 Appellate Division Opinion, and for good cause shown:

IT IS on this 3<sup>rd</sup> day of August, 2012,

ORDERED THAT:

1. The May 26, 2011 Order is vacated and superseded by this Order.
2. This Order is issued in accordance with the June 1, 2012 Appellate Division Opinion reversing the May 26, 2011 Order.
3. Prior Discovery and Scheduling Orders shall be revised to allow for the implementation of this Order in accordance with the June 1, 2012 Appellate Division Opinion.
4. Defendants are hereby permitted to retain as an expert witness any physician who is identified as a treating physician of a plaintiff in this litigation, subject to the following:
  - a. Defendants and their attorneys shall monitor whether the physician-expert has treated any of the plaintiffs;
  - b. Defendants and their attorneys shall not communicate with the physician-expert about any of his/her patients who are plaintiffs or are likely to become plaintiffs in this litigation;
  - c. Defendants and their attorneys shall not retain or use a treating physician as an expert in any case brought by a patient of the physician; and
  - d. Defendants and their attorneys, before having any substantive communication with a prospective physician-expert, shall provide the physician with a copy of this Order and secure the physician's written acknowledgement that he/she has read the attached Memorandum to Physicians (Exhibit 1 to this Order).

5. Plaintiffs' counsel and patient-plaintiffs shall not suggest to treating or consulting physicians that any prohibition exists as to the physician's participation as an expert in this litigation for either side. However, nothing in this Order precludes a patient-plaintiff from personally contacting her physician and discussing any personal concerns she has about the physician testifying for the defense. All counsel, their agents, and their clients shall truthfully communicate the cautions and constraints regarding participation of a treating physician as stated in the attached Memorandum to Physicians. Defense counsel shall also make clear to treating physicians that their informal participation in communications with defendants and their attorneys shall be entirely voluntary.

6. Defendants shall be precluded from calling a treating physician to testify with regard to causation issues with regard to that physician's own patient-Plaintiff(s), if that treating physician has been retained as a consultant/expert by the Defendants.

7. Any objection by a Plaintiff to a particular treating physician being permitted to act as a consultant/expert for the Defendants with regard to Plaintiffs not treated by that physician shall be addressed on a case-by-case basis.

8. Plaintiffs' counsel will identify to defense counsel past or present treating or consulting physicians for any new plaintiff added to the litigation within seven (7) days of filing the Complaint.

9. Defense counsel shall give notice to plaintiffs' counsel of their good faith intent to contact any specific past or current treating or consulting physician

for the purpose of exploring whether that physician might be engaged as a defense expert at least 10 days before making such contact.

10. Defense counsel shall make best efforts to ensure that any physician who is retained or otherwise substantively consulted by defense counsel notifies any current patient-plaintiffs of that engagement so that the patient is provided an opportunity to transfer her care and treatment to a different physician.

11. Defense counsel shall not be obligated to give further notice to plaintiffs' counsel after the initial notification to plaintiffs' counsel as to any physicians that the defense in fact interviews, consults, or retains, until required to do so by discovery rules and orders, but no interviews or contacts shall be undertaken without permission of the Court unless defense counsel is actually seeking to retain an expert witness or consultant and any interview or contact is actually for the purpose of determining whether to retain the expert as a consultant or witness.

12. If a physician advises defense counsel at any time that he or she does not wish to be an expert or consultant, or defense counsel decides not to retain the physician, then communication with the physician shall cease unless the Court grants permission upon application by defense counsel on a case-by-case basis.

IT IS FURTHER ORDERED THAT a copy of this Order shall be served upon all parties within seven (7) days of entry.

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

## EXHIBIT 1

### Memorandum to Physicians

Ethicon, Inc. and Johnson & Johnson (“Defendants”) are permitted to consult or retain as expert witnesses physicians who may have treated one or more patients who are Plaintiffs in this litigation. Despite their service as experts, these physicians are still bound by the physician-patient privilege and are forbidden from communicating with Defendants, their employees, and their attorneys about their patients who are Plaintiffs, absent subpoena, their patients’ written authorization, or another order from the Court. Defendants and their representatives shall identify which of a physician’s patients are Plaintiffs before any substantive communication begins. If a physician, at any time, believes that Defendants are attempting to communicate about a Plaintiff who is or was the patient of the physician, directly or indirectly, the physician shall cease contact with Defendants, and notify the below listed counsel for Defendants and Plaintiffs.

Defendants: Kelly S. Crawford, Esq.  
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Any physician who agrees to be retained or otherwise substantively consulted, by the Defendants, whether paid or not, shall promptly notify any current patient-Plaintiff of that engagement and provide to the patient(s) the opportunity to transfer her or their care and treatment to a different physician. This notification shall be in writing with a copy to that patient's attorney.

Dated: \_\_\_\_\_