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

FILED

SEP 11 2019

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

CASE MANAGEMENT ORDER NO. 6

[PLAINTIFF PROFILE FORM]

This matter having been opened to The Court by the parties; and the parties having indicated they have no objection to the form and entry of the within Order; and good cause appearing;

IT IS on this 11th day of September, 2019,

ORDERED:

The Plaintiff Profile Form and authorizations attached hereto as Exhibit A are hereby adopted for use in this litigation.

- a. This Order shall govern: (1) all cases transferred to this Court, including those cases subsequently transferred; and (2) all cases directly filed in this MCL.
- b. For any case filed or transferred prior to entry of this Order (“Group 1 Cases”), Plaintiffs shall serve completed Plaintiff Profile Forms, executed authorizations, and responsive materials within sixty (60) days of the entry of this Order. For cases filed or transferred after the date of this Order, the Plaintiff Profile Form, executed authorizations, and responsive materials shall be served within sixty (60) days of the filing of the Defendants’ Answer.
- c. Pursuant to the agreement of the parties, all Plaintiff Profile Forms and corresponding authorizations, along with any responsive documentation, shall be completed, signed where applicable, and served electronically to NJPROCEEDMCL@butlersnow.com and proceedmcl@fleming-law.com.
- d. Every Plaintiff is required to provide Defendants with a Plaintiff Profile Form that is substantially complete in all respects to the best of the Plaintiff’s knowledge, answering every question in the Plaintiff Profile Form, even if a Plaintiff can answer the questions in good faith only by indicating “not applicable.” If a

Plaintiff is suing in a representative or derivative capacity, the Plaintiff Profile Form shall be completed by the person with the legal authority to represent the estate or person under legal disability.

- e. The Plaintiff Profile Form shall be completed without objections as to the question posed in the agreed upon Plaintiff Profile Form. This section does not prohibit a Plaintiff from withholding or redacting information from medical or other records provided with the Plaintiff Profile Form based upon a recognized privilege. If information is withheld or redacted on the basis of privilege, Plaintiff shall provide defendants with a privilege log that complies with the Rules Governing the Courts of the State of New Jersey simultaneously with the submission of the Plaintiff Profile Form.
- f. Contemporaneous with submission of the Plaintiff Profile Form, each Plaintiff shall transmit via email, dropbox, or other FTP upload, copies or electronic files of all medical records in their possession, custody, or control (including any medical records in their attorney's possession) related to the claims and/or alleged injuries in their case, including, but not limited to, records that support product identification.
- g. Contemporaneous with submission of the Plaintiff Profile Form, each Plaintiff shall transmit via email, dropbox, or other FTP upload, signed authorizations, which are attached to the Plaintiff Profile Form. Plaintiffs who are not making a claim for lost wages, lost earning capacity, and/or lost future earnings do not need to sign or return the authorizations related to IRS records, employment records, or education records. If an individual Plaintiff is not claiming mental anguish which

necessitated psychiatric treatment due to alleged Proceed Mesh injuries and not claiming that (s)he sought mental health treatment (including treatment for anxiety/depression) due to alleged Proceed Mesh injuries, then that Plaintiff is not required to sign or return the psychiatric authorization; provided however, that Defendants reserve the right to request such an authorization to collect such records if they have a good faith basis to believe such records should be produced in that case.

- h. The signed authorizations shall be undated and the recipient line shall be left blank. These blank, signed authorizations constitute permission for a third-party records vendor retained by the parties to obtain the records specified in the authorizations from the records custodians. In the event an institution, agency, or medical provider to which a signed authorization is presented refuses to provide responsive records, the individual Plaintiff's attorney shall attempt to resolve the issue with the institution, agency, or medical provider such that the necessary records are promptly provided. 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 10 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). Absent notification within 10 days of the assertion of such an objection or privilege, the vendor shall then provide the records to the requesting Defendants. Signing an

authorization for release of mental health treatment records shall not constitute waiver of any claim of discovery objection or privilege or any other legal protection for such records under applicable law. The provisions of Case Management Order No. 5 (Records Collection) shall apply to such records. The authorizations provided by Plaintiff become null and void when his or her case is resolved, and any use of the authorizations beyond that date is prohibited.

- i. The Plaintiff Profile Form will not be interpreted to limit the scope of inquiry at depositions nor will it affect whether evidence is admissible at trial. The admissibility of information in the Plaintiff Profile Form is governed by the New Jersey Rules of Evidence, and objections to admissibility are not waived by virtue of the completion and service of a Plaintiff Profile Form.
- j. Plaintiff is under a continuing obligation to timely supplement or amend Plaintiff Profile Forms and responsive documentation.
- k. In any case where a deposition of the Plaintiff is scheduled, Plaintiff must submit any supplement and/or amendments, to the extent applicable and to the extent the material is within the Plaintiff's or his/her attorney's possession, at least 21 days before the date of Plaintiff's deposition. If the Plaintiff's deposition is set to occur in less than 21 days from the time it is scheduled, then Plaintiff shall submit any such supplements and/or amendments as soon as practicable but no less than 5 business days before the date of Plaintiff's deposition.
- l. Any Plaintiff who undergoes revision surgery or other surgical procedure related to the claims at issue in the case after completing and serving a Plaintiff Profile Form must complete and serve an updated Plaintiff Profile Form (including

providing any additional responsive documentation) within 90 days after the date of the surgery or 90 days after Plaintiff's counsel becomes aware of such surgery or procedure, whichever is later.

- m. Any Plaintiff who fails to fully comply with the requirements above shall be provided notice of such failure by email and mail from Defendants' Counsel to all counsel of record on the case, and shall be provided 14 additional days to cure such deficiency ("Cure Period") to be calculated from the receipt of such notice of deficiency from counsel for the Defendants. If Defendants' notice of failure is related to a deficiency regarding information provided in the Plaintiff Profile Form, as opposed to Plaintiff's failure to provide a Plaintiff Profile Form whatsoever, Defendants shall state with particularity in Defendants' notice to Plaintiff why Defendants believe the information in the Plaintiff Profile Form is deficient. Defendants shall also be required to make themselves available by email or phone to meet-and-confer to clarify any alleged information deficiencies.
- n. *Any Request for an extension of time to serve the Plaintiff Profile Form, authorizations and responsive documents and/or any request for an extension of the deficiency cure period should be submitted to Defendants via email to NJPROCEEDMCL@butlersnow.com.*
- o. *If a Plaintiff fails to cure a deficiency within the Cure Period set forth in section m. above, Defendants may seek permission to file a Motion to Compel (if Plaintiff Profile Form information deficiency) or a Motion to Dismiss (if Plaintiff has failed to provide a Plaintiff Profile Form).*

p. Plaintiff shall thereafter have 14 days to file a Response to the Motion and show good cause why the information is sufficient, the case should not be dismissed, and/or why less drastic sanctions other than dismissal are warranted. Defendants may file a Reply Brief within 7 days of Plaintiff's Response. *Any failure by Plaintiff to respond to the Motion within the specified period shall result in dismissal of the case.*

q. This Case Management Order shall apply to each member related case previously transferred to, or filed in this Court. In cases subsequently filed in this Court, it shall be the responsibility of the Parties to review and abide by all pretrial Orders previously entered by the Court. The Orders may be assessed through the New Jersey State Court Electronic Filing System.


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