

IN RE : COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
REGLAN/METOCLOPRAMIDE :
LITIGATION :
: JANUARY TERM, 2010
This Document Relates to All Cases : NO. 01997

CASE MANAGEMENT ORDER NO. 9

AGREED UPON ORDER REGARDING THE PRESERVATION OF DOCUMENTS
AND ELECTRONICALLY STORED INFORMATION

This matter, having been opened to the Court by counsel for the Parties, and the Parties having consented, stipulated and agreed to entry of the within Consent Order, and good cause appearing therefore, it is hereby **ORDERED** as follows:

I. GENERAL

This Order governs the preservation of potentially relevant documents, data, and tangible things within the Parties' possession, custody and/or control relevant to allegations and defenses and/or that may lead to the discovery of admissible evidence, in cases filed in or consolidated before this Court in *In re Reglan/metoclopramide Litigation Products Liability Litigation*, Court of Common Pleas, Case No. 01997, and to every action that is or will in the future become a part thereof (collectively "the Litigation").

II. DEFINITIONS

A. As used herein, "Documents, Data, and Tangible Things" shall be interpreted broadly to include electronically stored information ("ESI") on hard drives, USB or thumb drives, databases, computers, handheld devices, floppy disks, CD-ROM, magnetic tape, optical disks, or other devices for digital data storage or transmittal. This shall include, but is not limited to, writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, E-mail, telephone message records or logs, hard drives, removable computer storage media such as tapes, discs and cards, printouts, document image files, Web pages, databases, spreadsheets, books, ledgers, journals, orders, invoices, bills, vouchers, checks statements, worksheets, summaries, compilations, computations, charts, diagrams, powerpoints or other demonstrative media, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, phonographic, tape or digital records and any transcripts thereof, drafts, jottings and notes, studies or drafts of studies or other similar such material. Information that serve to identify or locate such material, such as file inventories, file folders, indices, and metadata, are also included in this definition, to the extent available. No Party is under an obligation to preserve voicemail or instant messages. As used herein, "Preservation" shall be interpreted to accomplish the goal of maintaining the integrity of potentially relevant documents, data, and tangible things and shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding, or deletion of such materials.

B. As used herein the terms, "Reglan" and "metoclopramide" and/or "the drug(s)" means Defendants' products containing metoclopramide (marketed under these names or other names).

C. As used herein, the "Parties" do not include Plaintiff-specific medical providers in this Litigation.

III. PRESERVATION OBLIGATIONS – DEFENDANTS

All Defendants shall take reasonable steps, including the dissemination of Legal Hold Notices to all employees and/or departments reasonably likely to possess information relating to Reglan and/or metoclopramide or the defenses and the claims at issue in this action, to ensure the preservation of documents, data, and tangible things that are reasonably likely to be the subject of discovery in the Litigation.

Within 15 days of the date of this Order, each Defendant shall submit to Discovery Master Bock and Plaintiff Liaison Counsel an affidavit detailing how the Defendant plans to preserve documents, data, and tangible things that are reasonably likely to be the subject of discovery in the Litigation. Plaintiffs shall meet and confer with each Defendant regarding any disputed issues concerning that Defendant's proposed preservation methods and may present any unresolved issues to Discovery Master Bock for his decision.

IV. PRESERVATION OBLIGATIONS - PLAINTIFFS

The preservation activities set forth in this section shall fully satisfy the preservation obligations of the individual personal injury Plaintiffs in the Litigation:

A. Preserve all potentially relevant documents, data, and tangible things in their possession concerning "Reglan," "Metoclopramide", and/or "the drug(s)", and all Reglan/metoclopramide labels, bottles, product packaging, and containers, of any kind.

B. Preserve any documents or ESI relating to their use of Reglan/metoclopramide or their injuries at issue in this litigation that are stored on the hard drive of a computer owned by the Plaintiff. This obligation does not require a plaintiff to copy or create a duplicate image of the hard drive. Plaintiff's obligation is fulfilled if the relevant ESI and documents are retained on the hard drive. In the event that a Plaintiff's hard drive is replaced, the Plaintiff shall (1) retain the old computer hard drive or (2) notify Plaintiff's counsel before destroying or discarding the old computer hard drive, such that Defendants are provided an opportunity to copy or create a duplicate image of the hard drive at cost, under the supervision of Plaintiff, in order to satisfy their preservation obligation. If a Plaintiff chooses to replace the hard drive, the Plaintiff will contemporaneously prepare a statement verifying that all documents relating to Plaintiff's use of Reglan/metoclopramide were identified and transferred to Defendant's copy, and that any associated metadata was not altered, and a description of the general nature of the documents/data that were maintained. Plaintiff will provide the statement to counsel of record in Plaintiff's case.

C. Preserve any documents relating to their use of Reglan/metoclopramide or their injuries at issue in this litigation that are stored on any removable media owned by the Plaintiff. Plaintiff's obligation is fulfilled if the relevant documents are retained on the media. In the event that a Plaintiff's removable media is replaced, the Plaintiff shall (1) retain the old media or (2) notify Plaintiff's counsel before destroying or discarding the old media, such that Defendants are provided an opportunity to copy or create a duplicate image of the media at cost, under the

supervision of Plaintiff, in order to satisfy their preservation obligation. If a Plaintiff chooses to replace the media, the Plaintiff will contemporaneously prepare a statement verifying that all documents relating to Plaintiff's use of Reglan/metoclopramide were identified and transferred to Defendant's copy, and that any associated metadata was not altered, and a description of the general nature of the documents/data that were maintained. Plaintiff will provide the statement to counsel of record in Plaintiff's case; and

D. Preserve all medical and pharmacy records in their possession or control and records of medical expenses allegedly incurred in connection with use of Reglan/metoclopramide.

V. RESERVATION OF RIGHTS

The Parties do not concede that any of the information subject to this Consent Order is discoverable, relevant, or admissible, and the Parties expressly reserve the right to challenge any specific discovery request concerning any such information. The Parties also reserve the right to challenge the competency, relevance, materiality, privilege, and/or admissibility into evidence of such documents, information, or material in these or any subsequent proceedings or at the trial of these or any other actions, in this or any other jurisdiction.

IT IS SO ORDERED BY THIS COURT


The Honorable Sandra Mazer Moss

8/16/10