UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE: NUVARING PRODUCTS LIABILITY LITIGATION	)	4:08 MDL 1964 RWS
	)	ALL CASES

ORDER REGARDING PRESERVATION OF RECORDS AND *PRIMA FACIE* EVIDENCE OF USAGE, INJURY AND CAUSATION REQUIREMENTS FOR PENDING CASES NOT PARTICIPATING IN THE NUVARING RESOLUTION PROGRAM AND NEWLY FILED OR TRANSFERRED CASES

I. INTRODUCTION

This Order applies to all Plaintiffs with personal injury claims pending as of February 7, 2014 in these cases, or subsequently filed or transferred into this proceeding. This Order requires such Plaintiffs to produce certain specified information regarding their personal injury claims. The Order does not apply to any Plaintiff whose claim is eligible for, and has been submitted to, the NuvaRing Resolution Program. Moreover, if a Plaintiff has already undertaken to meet any of the obligations set forth in this Order pursuant to this Court's previous case management orders, that Plaintiff is not required under this Order to duplicate any of those actions already undertaken. Persons who represent themselves *pro se* in this proceeding shall comply fully with all obligations required of counsel by this Order, unless otherwise stated.

With respect to the cases filed on or after February 7, 2014, Counsel for Defendants shall provide notice to Plaintiff's Counsel or Plaintiff *pro se* of the existence of this Order and shall attach a copy of this Order to such notice. Notice shall be provided via e-mail, if available, and regular U.S. Mail, with a copy to Plaintiffs' Liaison Counsel of both e-mail and regular U.S. Mail service. Upon the date of service of this Order on Plaintiff's Counsel or Plaintiff *pro se*, the deadlines set forth under Sections II and III below, *Preservation Notice Requirement* and *Discovery Requirements*, shall be triggered.

II. PRESERVATION NOTICE REQUIREMENT

A. Within thirty (30) days after the final Opt-In Deadline or Notification Deadline, as may be extended under the terms of the NuvaRing Resolution Program Master Settlement Agreement, for cases that were pending as of February 7, 2014, or, for cases filed on or after February 7, 2014, within forty-five (45) days from the date that Counsel for Defendants has served Plaintiff's Counsel or Plaintiff *pro se* with a copy of this Order (pursuant to the terms referenced above),

Counsel for Plaintiff or Plaintiff *pro se* shall notify the following individuals or entities, by registered mail (with return receipt) (each, a "Notice"), that the individual or entity may have records relevant to the Plaintiff's claim in these cases ("Claim") and that any records relating to the Plaintiff must be preserved pursuant to the Order Governing Procedures For Notices to Third Parties Regarding Records Preservation, entered by this Court on April 1, 2009 (the "MDL Preservation Order"), pending collection by the Plaintiff or Defendant:

i. All Pharmacies that dispensed any medications to the Plaintiff for the period from three years prior to the date of the first diagnosis of the alleged personal injury to the present;

ii. All Physicians, Medical Facilities, other Healthcare Providers and/or other persons ("Other Providers") who prescribed NuvaRing for the Plaintiff, or provided any samples of NuvaRing to the Plaintiff;

iii. For the period of three years prior to the date of the first diagnosis to the alleged personal injury to the present:

1. Plaintiff's primary care physician;

2. Any healthcare provider who counseled Plaintiff regarding birth control or prescribed birth control to Plaintiff;

3. Any hospital who treated Plaintiff for any reason; and

4. Any healthcare provider who treated Plaintiff for the personal injury alleged in her case.

B. A copy of the MDL Preservation Order shall be attached to the Notice sent pursuant to this Section, and all copies of the Notice shall be preserved by counsel for Plaintiff or Plaintiff *Pro Se* for so long as the Claim remains pending in this proceeding.

C. Plaintiffs shall serve a statement listing the names and addresses of all individuals or entities to which Notices were sent, along with copies of the Notices and a signed certification that the Notices were sent as required by this Order, within thirty (30) days after the final Opt-In Deadline or Notification Deadline, as may be extended under the terms of the NuvaRing Resolution Program Master Settlement Agreement, if their case was pending prior to February 7, 2014, or for cases filed on or after February 7, 2014, within forty-five (45) days after they have been served with a copy of this Order by Counsel for Defendants (pursuant to the terms in Section I above). Service of the Notice on Defendants by Plaintiffs shall be made by email to Melissa Geist at MGeist@ReedSmith.com.

D. Plaintiffs who fail to fully comply with the requirements of Paragraph C above shall be given notice of such failure by e-mail or fax from Defendants' Liaison Counsel or his designee and shall be provided thirty (30) additional days to cure such deficiency ("Cure Period"). No other extensions will be granted unless agreed to by all Parties. If Plaintiff fails to cure the deficiency within the Cure Period, Defendants' Liaison Counsel or his designee may file a Motion to Show Cause why that case should not be

dismissed with prejudice. Plaintiff shall thereupon have sixty (60) days to respond to the Notice to Show Cause. Any failure to respond to the Motion within the required period of time shall lead to the dismissal of the case with prejudice, except for good cause shown.

E. Absent good cause shown for the failure to comply with the requirements of the Preservation Notice is Order, a Plaintiff may not seek to introduce into evidence at trial any document or information from a Pharmacy, Physician, other Healthcare Provider and/or Other Provider, if a Notice was required by Paragraph A of this Order and such Notice was not sent to the Pharmacy, Physician, other Healthcare Provider and/or Other Provider from whom such document or information was obtained.

III. DISCOVERY REQUIREMENTS

A. Within thirty (30) days after the final Opt-In Deadline or Notification Deadline, as may be extended under the terms of the NuvaRing Resolution Program Master Settlement Agreement, or, for cases filed on or after February 7, 2014, within forty-five (45) days from the date that Counsel for Defendants has served Plaintiff's Counsel or Plaintiff *pro se* with a copy of this Order (pursuant to the terms in Section I above), Plaintiffs who are subject to this Order shall produce all of the documents and/or information described in this Section III.

i. All pharmacy records regarding the dispensing of drugs to the Plaintiff for the period from three years prior to the date of the first diagnosis of the alleged personal injury to the present.

ii. A Plaintiff Fact Sheet ("PFS") that complies with the requirements of the MDL Order Governing Submission of Plaintiff Fact Sheets, entered by this Court on August 6, 2008 (the "MDL PFS Order"), and authorizations in the forms previously approved by the Court.

iii. For healthcare providers identified in the PFS, and for the period of three years prior to the date of the first diagnosis of the alleged personal injury to the present:

1. All medical records from any healthcare provider who counseled Plaintiff regarding birth control or who prescribed NuvaRing or any other birth control to Plaintiff;

2. All medical records relating to the Plaintiff from Plaintiff's primary care physician;

3. Any hospital who treated Plaintiff; and

4. Any healthcare provider who treated Plaintiff for the personal injury alleged in her case.

iv. A certification signed by Plaintiff or their counsel (i) attesting that records have been collected from all pharmacies that dispensed drugs to, or for, the

Plaintiff, as described in subparagraph A(1) above; (ii) attesting that all medical records described in subparagraph A(3) above have been collected; and (iii) attesting that all records collected pursuant to subparagraphs A(1) and A(3) have been produced, pursuant to this Order.

v. A report complying with Rule 26(a)(2) on general causation for the injury alleged by Plaintiff from an expert opining to a degree of medical or scientific certainty that NuvaRing poses an increased risk to women for the type of injury alleged by Plaintiff, as compared to other commercially available combined hormonal contraceptives. For cases alleging that the Plaintiff incurred a VTE injury, the Plaintiff may adopt any of the general causation reports prepared by the experts identified by Plaintiffs in these cases or the MDL.

vi. A report complying with Rule 26(a)(2) from a medical expert opining to a reasonable degree of medical certainty, that the use of NuvaRing caused or substantially contributed to the personal injury alleged by Plaintiff.

B. If any of the documents described in subparagraphs A(1) and (3) above do not exist, Plaintiff or her counsel shall state that fact and the reason, if known, why they do not exist in this affidavit, and provide a "No Records Statement" from the pharmacy or healthcare provider.

C. Service on Defendants by Plaintiff or her counsel of items set forth above shall be made by email to Melissa Geist at MGeist@ReedSmith.com.

D. Plaintiffs who fail to fully comply with the requirements of this Order shall be given notice of such failure by e-mail or fax from Defendants' Liaison Counsel or his designee and shall be provided thirty (30) additional days to cure such deficiency ("Cure Period"). If a Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Liaison Counsel or his designee shall meet and confer with Plaintiff, and if that does not result in a cure then Defendant's Liaison Counsel may file a Motion to Show Cause why that case should not be dismissed with prejudice. Plaintiffs shall thereupon have thirty (30) days to respond to the Motion to Show Cause. Any failure to respond to the Motion within the required period of time shall lead to the dismissal of the case with prejudice, except for good cause shown.

E. To the extent not expressly stated herein, nothing in this Order abrogates or replaces each Plaintiff's obligation to submit the PFS, authorizations, and other materials required under the MDL PFS Order. The Plaintiff need not re-submit a PFS if one has already been submitted with respect to her claim.

IT IS SO ORDERED this 7th day of February, 2014

HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

General Information

Court	United States District Court for the Eastern District of Missouri; United States District Court for the Eastern District of Missouri
Federal Nature of Suit	Personal Injury - Product Liability[365]
Docket Number	4:08-md-01964