

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: INVOKANA (CANAGLIFLOZIN)	:	MDL No. 2750
PRODUCTS LIABILITY LITIGATION	:	Master Docket No. 3:16-md-2750
	:	
	:	JUDGE BRIAN R. MARTINOTTI
	:	JUDGE LOIS H. GOODMAN
	:	

THIS DOCUMENT RELATES TO: ALL ACTIONS

CASE MANAGEMENT ORDER NO. 13
(*Ex Parte* Communications with Healthcare Providers)

The parties, after extensive negotiation and the agreement of counsel, have proposed the following agreed plan to address issues relating to *ex parte* communications with healthcare providers. The Court finds the agreed plan to be appropriate and, thus, hereby **ORDERS AS FOLLOWS:**

1. Plaintiffs are permitted to engage in *ex parte* communications with Plaintiffs' prescribing/treating healthcare providers and are permitted to provide prescribing/treating healthcare providers with documents not previously seen by said healthcare providers and may inquire into how said documents might have changed the healthcare providers' prescribing/treating decisions, if at all.

2. Documents that may be provided to Plaintiffs' prescribing/treating healthcare providers include the following:

- a. Medical records of the Plaintiff
- b. Research documents, scientific studies, and related materials;
- c. Internal Defendant documents;

- d. Documents identified as confidential and subject to the Protective Order entered in the above-referenced matter on December 16, 2016 [Doc No. 5]; and
- e. Product warnings or labels.

3. Any documents provided or shown to prescribing/treating healthcare providers during *ex parte* communications may not contain notes, highlighting, underlining, Plaintiff-supplied redactions, and/or any other markings that modify the document or direct a reader's attention to a particular portion of the document.

4. Plaintiffs must provide Defendants precise designations, descriptions or copies of all documents shown or provided to any such healthcare provider during *ex parte* communications ("*ex parte* materials") at least forty-eight (48) hours before the healthcare provider's deposition. In the event that the *ex parte* communication occurs less than 48 hours before the deposition, Plaintiffs shall provide the *ex parte* materials as soon as is practically possible before the deposition.


5. Plaintiffs must comply with the requirements of the Protective Order entered in the above-referenced matter on December 16, 2016 [Doc No. 5] when providing prescribing/treating healthcare providers with any documents deemed confidential pursuant to said Order.

6. Defendants will be free to explore with the prescribing/treating healthcare providers during their depositions the nature of the *ex parte* communications with Plaintiffs' attorneys and may show documents to the prescribing/treating healthcare providers that were not shown during the *ex parte* communications with Plaintiffs' attorneys.

7. This Order shall be shown to Plaintiffs' prescribing/treating healthcare providers during any *ex parte* meeting subject to this Order.

8. Defendants' counsel and/or Defendants' counsel designees are not permitted to engage in *ex parte* communications with Plaintiffs' prescribing/treating healthcare providers. Nothing in this Order prohibits Defendants' counsel from retaining a prescribing/treating healthcare provider of a given plaintiff in this litigation, subject to the following limitations: (1) under no circumstances shall that prescribing/treating healthcare provider be permitted to offer expert testimony or expert opinions about his/her patient; (2) any prescribing/treating healthcare provider who is retained as an expert must have been retained before the Plaintiff Fact Sheet disclosing the healthcare provider's name is provided to Defendants; (3) Defendants' counsel shall not use a Plaintiff Fact Sheet or other discovery provided by a Plaintiff to locate or cultivate an expert for this litigation; and (4) if/when it is discovered that a prescribing/treating healthcare provider who has been retained by Defendants also is a prescribing/treating healthcare provider for a given Plaintiff in this litigation, Defendants shall immediately notify Plaintiff's counsel of the relationship as well as PSC co-lead counsel in the MDL, including the name of the Plaintiff, name of the healthcare provider and the approximate date the healthcare provider was retained by Defendants. Defendants may seek modification of the limitations set forth in this paragraph, for good cause shown, in the event that this MDL proceeding involves greater than 1,500 Plaintiffs.

9. Additionally, Defendants' counsels' staff is permitted to contact Plaintiffs' prescribing/treating healthcare providers office staff for the purpose of scheduling depositions. However, the parties agree, subject to timely efforts, Plaintiffs' counsel shall be given the first option to contact Plaintiffs' prescribing/treating healthcare providers to schedule depositions.

So Ordered this 30th day
of MAY, 2017


HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

[A large, handwritten mark, possibly a signature or initials, is written across the page.]