

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: ELMIRON (PENTOSAN  
POLYSULFATE SODIUM)  
PRODUCTS LIABILITY  
LITIGATION**

**Case No. 2:20-md-02973 (BRM)(ESK)**

**MDL No. 2973**

**JUDGE BRIAN R. MARTINOTTI  
JUDGE EDWARD S. KIEL**

**THIS DOCUMENT RELATES TO:  
ALL ACTIONS**

**CASE MANAGEMENT ORDER NO. 24  
(TREATER AND/OR PRESCRIBER DEPOSITION SCHEDULING PROTOCOL)**

**I. SCOPE OF ORDER**

In furtherance of the effective and efficient case management of complex litigation, this Case Management Order (“CMO”) will govern the guidelines and procedures for scheduling and conducting treater and prescriber depositions for the In Re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation (“MDL No. 2973”).

**A. GOVERNING LAW**

Discovery shall be governed by the applicable provisions of the Federal Rules of Civil Procedure, except as otherwise provided herein or in any other Case Management Order. Unless specifically modified herein, nothing in this Order shall be construed to abrogate, modify, or enlarge the Federal Rules of Civil Procedure (“FRCP”).

**B. STIPULATIONS**

The Parties may, by agreement, alter, amend, or modify any practice related to the scheduling, notice or conduct of a deposition, including, but not limited to, the provisions in this Order.

## **II. TREATER AND/OR PRESCRIBER DEPOSITION SCHEDULING PROTOCOL**

**A. General Scheduling Considerations.** Defendants have provided the liaison for the PSC with a list of “blackout” (do not schedule) dates related to the deposition of Treater/Prescribers for each specific Bellwether Discovery Plaintiff. The parties will endeavor in good faith to schedule around these dates when possible.

**B. Conduct of Scheduling.** The Parties have sought the assistance of Special Master Polifroni in reaching an agreement regarding the conduct of scheduling for Treater/Prescriber depositions. Consistent with the Special Master’s recommendations, the parties agree to the following:

1. Plaintiffs have provided to counsel for Janssen a complete list of those Treater/Prescribers, organized by Bellwether Discovery Plaintiff, whom they intend to contact for purposes of deposition scheduling.
2. With regard to written scheduling communications with Treater/Prescribers, Plaintiffs shall provide counsel for Janssen a copy of such communications on a weekly basis.
3. Before placing new scheduling calls to Treater/Prescribers, Plaintiffs shall call the designated contact for Janssen, and then conference in the relevant doctor’s office. In order to assist with this process, Janssen has provided Plaintiffs with the name and contact number for the Janssen counsel assigned as scheduler in each Plaintiff’s case.
4. If there is a pre-arranged call time with a Treater/Prescriber, Plaintiff shall provide notice to Janssen’s assigned scheduler in order to allow counsel an

opportunity to join the call. However, Plaintiffs are not required to (a) conference in Janssen's counsel to a live call back from a Treater/Prescriber, or (b) make adjustments to the requested call schedule in order to accommodate Janssen's counsel.

5. On a weekly basis, Plaintiffs shall provide Janssen's counsel with an updated list indicating which Treaters/Prescribers have been called.
6. To the extent that a Treater/Prescriber is not included in Plaintiffs' list of intended deponents described in Part B.1 above, Janssen shall have the right, though not the obligation, to handle scheduling for that deponent. When handling scheduling, Janssen shall extend the same courtesies to Plaintiffs' counsel as outlined in this Section. Namely, Janssen shall give notice to Plaintiffs' counsel before placing scheduling calls so that Plaintiffs' counsel has the opportunity to participate, provide Plaintiffs' counsel with a copy of scheduling correspondence and provide a weekly list of doctors who have been called.
7. On February 15, 2022, a liaison for the PEC and a liaison for Janssen shall meet and confer to assess the number of Treater/Prescriber depositions that remain to be scheduled. If needed, the resulting list will be divided between the parties to expedite scheduling, with each party taking the lead for their portion of the list.

**C. Selection of Deposition Dates.** The Parties agree to the following regarding deposition date selection for Treaters/Prescribers:

1. Each Treater and/or Prescriber will be asked to provide two (2) potential deposition dates.

a. The parties will endeavor to choose a deposition date that does not conflict with the blackout dates discussed in Section II.A. If no conflict with a blackout date exists, the parties will work in good faith to agree to the final date.

b. The parties will endeavor to schedule each Treater and/or Prescriber deposition during one of the following time frames:

(1) 9:00 AM ET until 1:00 PM ET

(2) 1:00 PM ET until 5:00 PM ET

However, the parties recognize that they will need to be flexible with these timeframes in order to accommodate the practice demands and related requests from the relevant Treater and/or Prescriber.

c. Except on those occasions where the provisions of Section C.1.d. apply, or as otherwise agreed to in advance by the parties, each Treater/Prescriber deposition shall be limited to four (4) hours. Each party will be entitled to up to two (2) hours of the four (4) hour deposition.

d. To the extent that calls to a particular Treater/Prescriber occurred without an attempt to contact Janssen's counsel first, Janssen will be allotted fifteen (15) additional minutes of questioning during the deposition of that particular Treater/Prescriber to explore those communications.

**D. Lead on Deposition.** With respect to taking the role of lead or first examiner for Treater/Prescriber depositions, the parties agree as follows:

1. Plaintiff's counsel will be the lead examiner for the IC related Treater/Prescriber depositions in the ten (10) cases that Plaintiffs selected for Bellwether Discovery, unless Plaintiff's counsel has previously noted that he/she does not desire to depose the relevant Treater/Prescriber. In such circumstances, Janssen will be the lead for the relevant deponent.

2. Janssen will be the lead examiner for the IC related Treater/Prescriber depositions in the ten (10) cases that Janssen selected for Bellwether Discovery, unless Janssen has previously noted that it does not desire to depose the relevant Treater/Prescriber. In such circumstances, Plaintiff's counsel will be the lead for the relevant deponent.

3. Plaintiff's counsel will be the lead examiner for all Treater depositions where the particular Treater specializes in eye disease, including those Treaters that specialize in ophthalmology and optometry.

4. Janssen will be the lead examiner for all Treater/Prescriber depositions not otherwise described in Parts E.1 and E.3 above.

**E. Shared Cost.**

1. Each party will be responsible for paying fifty (50) percent of the cost of a Treater/Prescriber deposition, unless otherwise agreed to in advance or if the deposition qualifies for individualized treatment as set forth in Section E.4 below.

2. Each Treater/Prescriber will be paid at his or her hourly rate.

3. The Treater/Prescriber will send an invoice to each of Plaintiff's counsel and counsel to Janssen (King & Spalding) at the conclusion of his/her deposition reflecting the cost of the time used at the deposition. Should a Treater/Prescriber

insist on handling billing in a different manner, the parties will work cooperatively to address the issue.

4. A party will be solely responsible for a Treater/Prescriber deposition invoice only if both of the following circumstances are met:

a. The opposing party informed the other side five (5) days prior to the deposition that it was not presently interested in extensive questioning of the particular Treater/Prescriber, and

b. Any questioning at the relevant deposition by the party that does not wish to pay for the deposition was limited to twenty (20) minutes or less total time.

In such circumstances, the party who proceeded with the deposition and handled the bulk of the questions shall pay 100% of the relevant invoice.

**F. Noticing the Deposition.**

1. The party who took lead on scheduling a Treater/Prescriber deposition shall be responsible for issuing the notice of deposition on behalf of both parties and arranging for court reporter coverage. In the event that an adjustment is needed, the parties will work cooperatively together to ensure that notice is issued timely and coverage arranged.

2. With regards to any notice of deposition issued to a Treater where the particular Treater specializes in eye disease, including but not limited to those Treaters that specialize in ophthalmology and optometry as described in Part D.3, the form of notice shall include a request for documents as reflected in Schedule A attached hereto.

**SO ORDERED** the 31st day of January 2022.

*/s/Brian R. Martinotti*  
The Hon. Brian Martinotti, U.S.D.J.

## Schedule A

Digital/electronic copies of all retinal imaging that you ordered, received, or performed on Plaintiff, including, but not limited to, color fundus photography, fundus autofluorescence, optical coherence tomography (OCT), near-infrared reflectance, and fluorescein angiography. Please produce these copies in a readable digital/electronic color format (e.g., JPEG, TIFF, MAT, PNG, BMP, etc.) that is capable of review for purposes of making a medical diagnosis. For OCT scans and images, please provide all available scans and images, including all a-scans, b-scans, and c-scans, and any associated retinal or macular thickness maps and thickness data.

Please provide a copy of the above materials on a thumb drive, flash drive, USB or similar storage device to:

For Plaintiffs:

Pamela Papasov, Esq.  
Morgan & Morgan  
201 N. Franklin Street, 7th Floor  
Tampa, FL 33602

For Defendants:

Michael Vives, Esq.  
King & Spalding  
1185 Avenue of the Americas  
34th Floor  
New York, NY 10036-2601

If needed, counsel can provide two (2) pre-paid mailing labels/envelopes and two (2) empty flash drives for your convenience. Please contact Amy Adovasio (aadovasio@kslaw.com), with carbon copy to Pamela Papasov (ppapasov@forthepeople.com), who will mail these materials to your office.