

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: DAVOL, INC./C.R. BARD,
INC., POLYPROPYLENE HERNIA
MESH PRODUCTS LIABILITY
LITIGATION**

Case No. 2:18-md-2846

**CHIEF JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson**

**This document relates to:
ALL ACTIONS.**

CASE MANAGEMENT ORDER NO. 7-B

Protective Order for Defendants' Production of Protected Health Information

It is ORDERED as follows:

1. For purposes of Case Management Order No. 7-B, Protected Health Information ("PHI") has the meaning set forth at 45 C.F.R. § 160.103 and shall refer only to PHI disclosed to a Party or its representatives in the course of and for purposes of litigation of the above-captioned matter. Case Management Order No. 7 (Protective Order) is hereby amended to include this Order related to the production of PHI.

2. Pursuant to this Order, the Parties are not waiving any objections to disclosure and/or production of any PHI during discovery or the right to challenge the relevancy, materiality or admissibility of any PHI provided by Defendants, or to object to the use of the any PHI in any subsequent proceeding or trial.

3. Nothing in this Order shall prevent or prohibit the Parties from seeking such additional or further protection as they deem necessary to protect PHI subject to discovery in this action.

4. Defendants may be required to disclose and/or use recollected and/or recorded PHI, the privacy of which is protected under the Federal Health Insurance Portability and Accountability Act (“HIPAA”), 110 Stat. 1936 (1996). All documents produced by Defendants that contain PHI shall be subject to the following terms.

a. Defendants are not required to redact PHI. At the time of production, Defendants will identify the documents or ESI as being produced that contain PHI and are subject to this Order.

b. Prior to using any documents that contain PHI as part of a filing, at a deposition, or in a motion or at a trial or hearing in this matter, Plaintiffs shall make a good faith effort to identify whether the document or ESI contains any information that is subject to redaction and to request Defendants to redact any such information. To the extent Plaintiffs fail to identify PHI, they are held harmless, but will make every effort to work with Defendants to ensure that PHI is redacted prior to use at a deposition, in a motion or at a trial or hearing in this matter.

c. Defendants shall independently have the right to identify any documents that contain PHI, including documents identified by Plaintiffs pursuant to Paragraph b, as subject to the requirements of the Protective Order and to require the redaction of the information set forth in that Order; in that event, Defendants shall provide Plaintiffs with a redacted version of the subject documents or ESI with the same production Bates number(s) and Plaintiffs shall destroy any unredacted copies or versions of the document that they possess.

d. Defendants shall have the right to identify any document, file, or other form of ESI produced pursuant to the Process as both being irrelevant to the matters in dispute in this action and containing trade secret or other confidential information and to “claw back” such

ESI or documents from the production consistent with Case Management Order No. 7, paragraph 30. Nothing in this Order shall expand the language in Case Management Order No. 7, paragraph 30 related to “claw back” of privileged, work product and/or confidential materials.

5. To the extent that the documents or ESI produced pursuant to the process above contain any adverse event reporter names or information of a patient who is not a party to this litigation and which would otherwise be redacted in accordance with this Order, Plaintiffs and their counsel and agents shall not contact the patient or reporter of an adverse event, except in situations where the names are Plaintiffs in this matter or treating physicians of Plaintiffs in this matter.

6. If any plaintiff in this litigation would like to use this Order for documents a plaintiff produces that contains PHI, a plaintiff can so elect by providing notice to Defendants via email at FederalBardService@ReedSmith.com.

7. The terms of this Order shall survive the conclusion of this litigation.

IT IS SO ORDERED.

6-27-2019
DATE

6/27/2019
DATE



EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE



KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE