

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Baltimore Division)**

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL No. 2775
Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**THIS DOCUMENT RELATES TO
ALL CASES**

**CASE MANAGEMENT ORDER NO. 20
(Plaintiff Signatures on Authorizations, Verifications and Interrogatory Answers)**

The Court hereby enters this Case Management Order (CMO) 20 to clarify for all MDL Plaintiffs' counsel the process for providing Plaintiff signatures on authorizations, Plaintiff Fact Sheet ("PFS") Verifications, and Interrogatory Answers. It has come to the attention of the Court that, in some instances, Plaintiffs have not themselves signed HIPAA and other Authorizations and PFS Verifications, but, instead, counsel or their staff (collectively referred to as "counsel" herein) have signed for them. Plaintiffs' counsel maintain that they have done so only with permission. The purpose of this CMO is to make clear that the Court requires the Plaintiff himself or herself to sign all HIPAA and other Authorizations in the first instance, all PFS Verifications, and all Interrogatory Answers, and to require new signatures to ensure that all documents are compliant with this CMO. Except with express authorization from the court in an individual case, electronic signatures of Plaintiffs are not permissible on any Verifications, Authorizations, or Interrogatory Answers in this MDL

I. Practices for New Cases Direct-Filed In or Transferred Into This MDL

- A. In every case direct-filed in or transferred into this MDL after the date of entry of this Order:

1. Plaintiff's counsel shall ensure that the original HIPAA authorization for medical records, and all other authorizations (*e.g.*, for employment records, tax records, etc.) shall be signed by the Plaintiff himself or herself. It is not permissible for Plaintiffs' counsel or their staff to sign for a Plaintiff or to photocopy a Plaintiff's signature from one document for use on another, or to change the date on a signed and dated authorization.
2. Pursuant to CMO 8 and CMO 12, "Plaintiffs' individual representative counsel shall also maintain in their file unaddressed, executed Authorizations." These unaddressed Authorizations shall be signed by the Plaintiff himself or herself. It is not permissible for Plaintiffs' counsel or their staff to sign for a Plaintiff or to photocopy a Plaintiff's signature from one document for use on another, or to change the date on a signed and dated authorization. However, the unaddressed, executed Authorization may be addressed to obtain records as described in CMO 8 and CMO 12.
3. Pursuant to CMO 8 and CMO 12, as applicable, "[u]ndated Authorizations constitute permission for Defendant to date (and where applicable re-date) Authorizations before sending to records custodians." Similarly, Plaintiffs' counsel who possess an undated Authorization signed by the Plaintiff himself or herself may insert a date or re-date such Authorization if needed.

B. Verifications and Interrogatory Answers: In every case direct-filed in or transferred into this MDL after the date of entry of this Order:

1. The original PFS Verification, and each subsequent PFS Verification that must be supplied with an amended PFS, shall be signed by the Plaintiff

himself or herself, after review of the completed PFS in a form ready to be submitted to MDL Centrality. It is not permissible for counsel to sign for a Plaintiff or to use a photocopy of Plaintiff's signature on any PFS Verification.

2. All interrogatory answers of an individual Plaintiff shall be signed by Plaintiff himself or herself, after review of the complete answers in a form ready for service, and amended interrogatory answers shall similarly be signed by Plaintiff himself or herself.

II. Practices for Existing MDL Cases

A. **Authorizations.** In every case direct-filed in or transferred into this MDL before the date of entry of this Order, except for (1) cases in the BHR Discovery Pool and THA Discovery Pool (see II.A.3. below) and (2) cases in which a new Authorization signed by the Plaintiff has been supplied pursuant to Smith & Nephew's request since November 30, 2020, Plaintiffs' counsel shall contact their clients and obtain a new HIPAA Authorization and any other type of Authorization previously uploaded to MDL Centrality or otherwise provided to Smith & Nephew that is signed by each such Plaintiff. Upon receipt of such Authorizations, they shall be uploaded to MDL Centrality.

1. Plaintiffs' counsel whose firms represent fewer than fifty (50) Plaintiffs in the MDL as of the date of entry of this Order shall obtain and upload to MDL Centrality the Authorizations described in paragraph II.A. above within sixty (60) days of entry of this Order.

2. Plaintiffs' counsel whose firms represent fifty-one (51) or more Plaintiffs in the MDL as of the date of entry of this Order shall obtain and upload to MDL Centrality the Authorizations described in paragraph II.A. above on the following schedule:
 - a. New signed Authorizations from at least fifty (50) Plaintiffs shall be obtained and uploaded to MDL Centrality within sixty (60) days of entry of this Order.
 - b. New signed Authorizations from fifty (50) additional Plaintiffs shall be obtained and uploaded to MDL Centrality within ninety (90) days of entry of this Order. New signed Authorizations for the remainder of the Plaintiffs represented by such firms shall be obtained and uploaded to MDL Centrality by no later than December 31, 2021.
3. New signed Authorizations as described in paragraph II.A. above for all BHR Discovery Pool Cases and all THA Discovery Pool Cases in which a new Authorization was not provided at Smith & Nephew's request since November 30, 2020, shall be obtained and uploaded to MDL Centrality within thirty (30) days of entry of this Order. Any such Authorizations shall be counted against the required totals in paragraphs II.A.1. or II.A.2.

B. Verifications and Interrogatory Answers: In every case direct-filed in or transferred into this MDL before the date of entry of this Order, except for (1) cases in the BHR Discovery Pool and THA Discovery Pool (see II.B.3. below) and (2) cases in which a new PFS Verification signed by the Plaintiff has been supplied pursuant to Smith & Nephew's request since November 30, 2020, Plaintiffs'

counsel shall contact their clients, provide them with a complete copy of the most recent PFS as previously submitted to MDL Centrality, and obtain a new Verification for that PFS. Upon receipt of such Verifications, they shall be uploaded to MDL Centrality.

1. Plaintiffs' counsel whose firms represent fewer than fifty (50) Plaintiffs in the MDL as of the date of entry of this Order shall obtain and upload to MDL Centrality the Verifications described in paragraph II.B. above within sixty (60) days of entry of this Order.
2. Plaintiffs' counsel whose firms represent fifty-one (51) or more Plaintiffs in the MDL as of the date of entry of this Order shall obtain and upload to MDL Centrality the Verifications described in paragraph II.B. above on the following schedule:
 - a. New signed Verifications from at least fifty (50) Plaintiffs shall be obtained and uploaded to MDL Centrality within sixty (60) days of entry of this Order,
 - b. New signed Verifications from fifty (50) additional Plaintiffs shall be obtained and uploaded to MDL Centrality within ninety (90) days of entry of this Order. New signed Verifications for the remainder of the Plaintiffs represented by such firms shall be obtained and uploaded to MDL Centrality by no later than December 31, 2021.
3. New signed Verifications as described in paragraph II.B. above for all BHR Discovery Pool Cases and all THA Discovery Pool Cases in which a new Verification was not provided at Smith & Nephew's request since November 30, 2020, shall be obtained and uploaded to MDL Centrality

within thirty (30) days of entry of this Order. Any such Verifications shall be counted against the required totals in paragraphs II.B.1. or II.B.2.

4. All future PFS Verifications to accompany an original or amended PFS shall be signed and dated by Plaintiff himself or herself, after review of the completed PFS in a form ready for submission via upload to MDL Centrality.

C. All Interrogatory Answers of an individual Plaintiff shall be signed by Plaintiff himself or herself, after review of the completed responses in a form ready for service, and amended Interrogatory Answers shall similarly be signed by Plaintiff himself or herself.

III. Compliance With This CMO

A. Notwithstanding entry of this Order, Smith & Nephew may raise or introduce evidence regarding the authenticity of any signatures at any time or for any purpose, including in connection with depositions or trial of any Plaintiff. Smith & Nephew may also challenge the authenticity of any Plaintiff's signature, and may seek such relief, including sanctions, as it believes appropriate, for non-compliance with this Order or for prior signature-related actions and/or testimony relating to signatures at any time. If Smith & Nephew designates a forensic document analyst or other handwriting expert as a case-specific expert in any individual case or seeks any relief under this Order, Plaintiffs may depose such expert or any other witnesses who have supplied factual information upon which Smith & Nephew relies for the relief sought or challenge to any signature, and reserve the right to take discovery on and challenge any evidence relating to handwriting or signatures in such

individual case(s), subject to any other applicable court orders, scheduling orders or rulings.

SO ORDERED, this 28th day of May _____, 2021.

/s/

Catherine C. Blake
United States District Judge