



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: RALEIGH HEART CLINIC LITIGATION CIVIL ACTION NO. 18-C-5000

THIS DOCUMENT APPLIES TO ALL CASES

CASE MANAGEMENT AND SCHEDULING ORDER

Pursuant to Rule 26.01 of the West Virginia Trial Court Rules, as well as Rule 42 of the West Virginia Rules of Civil Procedure, **THE COURT HEREBY ORDERS** all “the Raleigh Heart Clinic Litigation”¹ cases now pending or hereinafter filed in the State of West Virginia, shall be governed by the term of this Case Management Order (“CMO”).

The Court will grant relief from the requirements of this order only upon motion and good cause shown.

IT IS HEREBY ORDERED:

I. SCOPE OF ORDER

The purpose of this CMO is to facilitate the administration of the Raleigh Heart Clinic cases; to facilitate and expedite trials by reducing multiple filings and hearings; to establish a discovery schedule; and to prepare for the development of a trial plan for the orderly disposition of the cases. This CMO applies to all previously filed Raleigh Heart Clinic (“RHC”) personal injury lawsuits and all such cases subsequently filed hereafter.

¹ Order Assigning Judges, Designating Litig. for Electronic Filing and Service, and Scheduling Status Conference, *W.B. v. Raleigh Heart Clinic, et al.*, 17-C-245-K (May 7, 2018) (defining the mass litigation panel scope).

II. SCHEDULING

A. Motion to Dismiss

1. Oral argument on Cardinal Health's motions to dismiss occurred on September 21, 2018. The Court's ruling regarding Cardinal Health's motions to dismiss was entered by separate order. See *Order Denying Cardinal Health 414, LLC's Motions to Dismiss in Specified Cases* (Transaction ID 62501843) entered on September 28, 2018.

2. Oral argument on Dr. Barghouthi and the Raleigh Heart Clinic's motions to dismiss was scheduled for September 21, 2018, but by agreement of the parties, was postponed until October 15, 2018. The Court's ruling regarding these motions will be entered by separate order.

B. Discovery

1. By **no later than October 1, 2018**, the parties shall serve responses and objections to any currently outstanding written discovery requests and confer on continued evaluation of the scope and burden of discovery.

2. By **no later than October 10, 2018**, the parties shall file: 1) a joint status report on the outcome of continued discovery conference, including any agreements reached on the scope and timeline for the parties' discovery disclosures, other than those set forth in this Order, and 2) appropriate motions with respect to any remaining initial discovery disputes.

3. All written fact discovery will be completed by **no later than May 1, 2019**, and all discovery completed **by October 31, 2019**. All written discovery

requests must be served **at least sixty (60) days prior to May 1, 2019**.
Discovery responded to must be supplemented, if necessary, **by May 1, 2019**.

4. All discovery documents must be Bates-stamped with a unique identifier and must be produced digitally. The Court will grant relief from this requirement only in exceptional circumstances, upon motion, and with good cause shown.

5. No party shall be required to answer duplicative discovery requests. If referencing prior answers when answering interrogatories, the answering party must cite the interrogatory containing the information and identify the previous answer. All parties are required to serve individual discovery requests and responses on all counsel of record in the specific case at issue.

C. Expert Witness Disclosure

1. Each party shall produce expert disclosures containing the requirements of Rule 26(b)(4)(A)(1) by the deadlines set forth below:

Plaintiffs' Experts: April 30, 2019

Defendants' Experts: June 28, 2019

2. By **no later than September 15, 2019**, all objections or motions related to expert witnesses shall be filed.

D. Depositions

1. The parties shall conduct the deposition of Defendant Dr. Thair Barghouthi within 60 days of receiving completed written discovery responses from Dr. Barghouthi, Raleigh Heart Clinic and Cardinal Health and **no later than November 30, 2018**, on issues common to all cases (i.e. Dr. Barghouthi's

education, training, background, general practices, Raleigh Heart Clinic's employees, Raleigh Heart Clinic's practices, his and Raleigh Heart Clinic's infection control procedures, and the West Virginia Department of Health and Human Resources investigation). No questions regarding a specific Plaintiff should be asked at this initial common issue deposition. The parties may conduct additional depositions regarding Dr. Barghouthi and the Raleigh Heart Clinic's care and treatment of specific Plaintiffs or fact discovery on non-duplicative questions necessary to prepare for trial within the discovery time periods set forth herein.

2. The parties may depose any fact and expert witnesses as allowed by the West Virginia Rules of Civil Procedure.

3. Depositions must be noticed at least thirty (30) days in advance of the date the deposition is scheduled to occur. By written agreement, all counsel may waive this requirement. To prevent duplicative depositions, all parties must be notified of any deposition.

E. Expedited Hearing. Any party seeking an expedited hearing on a time-sensitive matter must file a motion to expedite that 1) demonstrates good cause, 2) states the position of each party opposing the motion, and 3) sets a date of hearing that is no less than seven (7) days after the motion's filing. Should the motion to expedite require more immediate judicial attention, the motion shall establish the necessity for an immediate hearing, and the filing party shall notify chambers staff of the motion.

F. Other Witnesses

No later than ninety (90) days prior to the end of discovery, all parties are to disclose all lay witnesses who may testify at trial.

III. MASTER ANSWER

Defendant Cardinal Health shall file a “Master Answer,” which shall serve as Cardinal’s Answer to each of the individual Plaintiff’s Complaints in the Master Case File (In re: Raleigh Heart Clinic Litigation Civil Action No. 18-C-5000). However, Cardinal Health is not deemed by the filing of the Master Answer to have waived the right to timely file a specific motion objecting to service of process, jurisdiction, or venue, or to assert any defense permitted under the West Virginia Rules of Civil Procedure within an Individual Case File. Defendants, Dr. Barghouthi and the Raleigh Heart Clinic, have already responded to Plaintiffs’ individual Complaints/Amended Complaints, and do not need to file a Master Answer within the Master Case File.

IV. ANSWER TO AMENDED COMPLAINTS

Where any Plaintiff’s Complaint is amended only to substitute a personal representative for an existing Plaintiff or to add new Defendants to an action, existing Defendants in the action need not answer the amended complaint, and each Defendant’s Answer/Master Answer shall be deemed an Answer to the amended Complaint.

V. PLAINTIFFS’ JOINT MASTER WRITTEN DISCOVERY

Plaintiffs shall serve master sets of written discovery on each Defendant. Responses are due within thirty (30) days after service or by a date set by agreement of the Parties. Each Defendant’s answers to the Plaintiffs’ Master Interrogatories shall not be deemed to waive the right of any Plaintiff to file non-duplicative case-specific Interrogatories, or the right of any

Defendant to whom such Interrogatories are directed to object. Any Defendant not served with Plaintiffs' joint master written discovery in any given case is under no obligation to respond.

VI. PLAINTIFFS' QUESTIONNAIRE / MEDICAL RECORDS

Plaintiffs shall submit to Defendants the completed Questionnaires and any previously gathered medical records for all of Plaintiffs within fourteen (14) days of the filing of this CMO.² Defendants do not waive any rights or any objections with regard to the Plaintiffs' Questionnaire. Nothing in this Section precludes Defendants from serving case-specific interrogatories, requests for production, or requests for admission on individual Plaintiffs, as contemplated under the Rules of Civil Procedure, but a Plaintiff will not be required to respond to a discovery request to the extent it seeks information that would be duplicative of information already provided by that Plaintiff in his or her responses to the Master Questionnaire.

After entry of the Agreed Medical Records Production Protocol, Plaintiffs shall produce a HIPAA authorization to any Defendant who requests such authorization within fifteen (15) days of that Defendant's request.

VII. DEFENDANTS' JOINT MASTER INTERROGATORIES

Defendants may serve on Plaintiffs master sets of written discovery. Responses are due within thirty (30) days after service or by a date set by agreement of the Parties. No Plaintiff is required to answer interrogatories seeking information that would be duplicative of information already provided by that Plaintiff in his or her responses to the Master Questionnaire.

² Of note, Plaintiffs have already produced some Plaintiff's Questionnaires and previously gathered medical records.

VIII. ESI PROTOCOL

The Parties have agreed to allow Defendants to respond to Plaintiffs First Set of Discovery in a joint good faith effort to minimize cost and efforts to all parties. In the interim, all Parties will continue negotiating an ESI protocol, which will be presented to the MLP, if necessary, after production by Cardinal Health **or by November 16, 2018 at the latest.**

IX. PRETRIAL AND TRIAL SCHEDULE

THE PARTIES SHALL BE READY TO CONDUCT MEDIATION BY: January 16, 2019. The Resolution Judges will enter a separate order regarding scheduling of mediation and mediation statements.

DEADLINE FOR DISPOSITIVE MOTIONS: October 4, 2019.

DEADLINE FOR RESPONSES TO DISPOSITIVE MOTIONS: October 18, 2019.

DEADLINE FOR REPLIES TO DISPOSITIVE MOTIONS: October 25, 2019.

Dispositive motions will be heard during the pretrial conference **on November 15, 2019.**

DEADLINE FOR MOTIONS IN LIMINE: October 11, 2019.

DEADLINE FOR RESPONSES TO MOTIONS IN LIMINE: October 25, 2019.

DEADLINE FOR REPLIES TO MOTIONS IN LIMINE: November 1, 2019.

Motions in limine will be heard during the pretrial conference **on November 15, 2019.**

EXHIBITS AND DEPOSITION DESIGNATIONS EXCHANGED: October 11, 2019.

Parties shall exchange full and complete copies of all exhibits intended to be introduced into evidence at trial and all deposition designations. All exhibits shall be pre-marked.

OBJECTIONS TO EXHIBITS, WITNESSES AND DEPOSITION DESIGNATIONS:
October 18, 2019. All parties shall meet and confer **no later than October 25, 2019,** to resolve objections to witnesses, exhibits and deposition designations.

DEADLINE FOR PRETRIAL CONFERENCE MEMORANDA: November 1, 2019.

All parties shall file and serve their pretrial conference memoranda and deliver their pretrial conference memoranda to the Presiding Judges and the Mass Litigation Manager. The pretrial conference memoranda shall contain:

- | | |
|----------------------------------|--------------------------------------|
| a. Statement of the Case | f. Specific List of Witnesses |
| b. Issues of Fact | (No reservations authorized) |
| c. Issues of Law | g. Pending Motions |
| d. Proposed Stipulations | h. Proposed Verdict Form |
| e. Specific Schedule of Exhibits | i. Deposition Designation Objections |
| (No reservations authorized) | |

The witness list shall be a bona fide list of intended trial witnesses. Names of witnesses shall be specified and shall include contact information for each witness and a statement of intended testimony. Unnamed/unlisted witness reservations are not authorized.

DEADLINE FOR PROPOSED JURY INSTRUCTIONS AND VOIR DIRE: November 1,

2019. All parties shall file and serve their proposed jury instructions and voir dire and shall deliver their proposed jury instructions and voir dire to the Presiding Judges and the Mass Litigation Manager. Parties shall also provide the Mass Litigation Manager with their proposed jury instructions and voir dire in Microsoft Word format via electronic mail **on November 1, 2019.** The Mass Litigation Manager's electronic mail address is kim.fields@courtswwv.gov .

PRETRIAL CONFERENCE: **At 9:00 a.m. on November 15, 2019,** in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia. **LEAD COUNSEL TRYING THE CASE SHALL APPEAR.**

TRIAL: At 9:00 a.m. on December 16, 2019, in Courtroom Four, also known as the Ceremonial Courtroom, on the Second Floor of the Kanawha County Courthouse, at 407 Virginia Street, East, Charleston, West Virginia.

MODIFICATION: The dates and requirements of this Scheduling Order are **FINAL**. No additional evidence developed as a result of deviations from this Scheduling Order will be admissible at trial. The Scheduling Order shall not be modified, except by leave of the Court.

SANCTIONS: In accordance with Rule 16(f) of the West Virginia Rules of Civil Procedure, the Court will impose the full spectrum of sanctions by the West Virginia Rules of Civil Procedure if a party or party's counsel fails to obey this order or other orders of this Court.

It is so **ORDERED**.

ENTER: October 30, 2018.

/s/ Jay M. Hoke
Lead Presiding Judge
Raleigh Heart Clinic Litigation