

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

IN RE: NATIONAL PRESCRIPTION)	MDL 2804
OPIATE LITIGATION)	
)	Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:)	
)	Judge Dan Aaron Polster
<i>All Cases</i>)	
)	<u>ORDER</u>
)	

Before the Court is the Emergency Motion for Leave to Take Trial Preservation Deposition of David Kessler, M.D. (Doc. #: 3594) filed by Plaintiffs' Executive Committee. Briefs in opposition were filed by the Distributor Defendants (Doc. #: 3597), Manufacturer Defendants (Doc. #: 3598), Pharmacy Defendants (Doc. #: 3599), and the Small Distributor Defendants (Doc. #: 3600). Plaintiffs filed a reply (Doc. #: 3602). On January 11, 2021, the Court heard oral argument regarding the Motion.

At oral argument, Plaintiffs represented to the Court that there is a strong likelihood that sometime shortly after noon on January 20, 2021, Dr. Kessler will be appointed to a position in the federal government that may prevent him from testifying as an expert witness, and Plaintiffs further represented there is no other possible witness with the experience and expertise to offer the opinions Dr. Kessler will offer in this MDL. For those reasons and as stated on the record, Plaintiffs' motion is granted. The Court allows the trial preservation deposition but reserves ruling on the admissibility of Dr. Kessler's testimony in any trial.

The Plaintiffs may conduct direct examination of Dr. Kessler for no longer than three hours on January 13, 2021. Manufacturer Defendants collectively may conduct cross examination of Dr.

Kessler for no longer than eight hours and at a time agreed by the parties and to conclude no later than noon January 20, 2021.

The parties shall provide the Court with the deposition schedule and access so that the Court can supervise the testimony, as requested by the parties.

No later than 11:59 pm today, January 11, 2021, Plaintiffs shall provide to Defendants a list of all documents they will use in their direct examination of Dr. Kessler. No later than 11:59 pm on January 12, 2021, Plaintiffs shall provide to Defendants the information requested regarding any payments received by Dr. Kessler for his work as an expert witness in this MDL and a list of his retentions.

Plaintiffs have stipulated they will not solicit testimony from Dr. Kessler regarding Distributor and Pharmacy Defendants. Plaintiffs have further stipulated they will not solicit testimony specific to any jurisdiction, and the scope of testimony will be limited to issues of general causation.

Defendant Endo Pharmaceuticals, Inc.'s request for stay of this order pending a petition for writ of mandamus is denied.

IT IS SO ORDERED.

/s/ Dan Aaron Polster January 11, 2021
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE