

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

All Cases

MDL 2804

Case No. 1:17-md-2804

Special Master Cohen

**Order Regarding Protective Orders and
Confidential Protected Health Information**

CVS has moved for a ruling from the Special Master to enforce Protective Orders governing the access and use of discovery produced in the MDL with the designation “Confidential Protected Health Information” (“CPHI”).

The MDL Protective Order states that discovery material produced with the designation CPHI shall not be disclosed or used “for any purpose other than” this Multi District Litigation. Dkt. 441 ¶75 at 34. The Special Master confirmed in a separate Protective Order that MDL counsel shall not share, disclose, or use discovery produced with the CPHI designation outside the MDL, even with State Attorneys General. *See* Dkt. 3666 at 8-9.

CVS’s present request for a ruling stems from plaintiff’s counsel’s use in a state court case—*Florida Health Sciences, Inc. et al. v. Sackler et al.* (Circuit Court of Broward County, Florida, Case No. 19-018882)—of discovery that CVS earlier produced in this MDL. Specifically, MDL counsel representing the plaintiff in *Florida Health Sciences* accessed CVS’s redacted prescription records, which CVS had produced in the MDL with the CPHI designation. However, CVS had also indicated on the face of the documents that the CPHI had been removed. Plaintiffs’

experts used the redacted prescription records in their reports in the *Florida Health Sciences* case. CVS contends this use of the MDL documents by plaintiffs' counsel was in violation of the MDL Protective Orders.

The Special Master concludes that plaintiffs' counsel's access was premised on a good-faith belief that the redacted materials had been scrubbed of CPHI, so that counsel's access was not in violation of the Protective Orders. Moreover, the *Florida Health Sciences* court has since granted plaintiffs' motion to compel production of the same redacted discovery materials at issue. Accordingly, those materials may be used in the *Florida Health Sciences* case without jeopardy of violation of this Court's Protective Orders.¹

To ensure clarity moving forward, however, the Special Master Orders as follows. MDL counsel shall not access or use outside of this MDL any MDL discovery material designated as CPHI, even if the discovery material has been marked as redacted, ***unless and until*** the producing Defendant certifies that it has redacted all CPHI. If MDL counsel believes that discovery material designated as CPHI should not have been so designated, or that the Defendant is unreasonably refusing to certify that existing redactions have removed all CPHI, then the appropriate course is

¹ The Special Master understands that the MDL discovery materials designated by CVS as CPHI, which MDL counsel accessed and used to litigate *Florida Health Sciences*, are entirely congruent with the CVS discovery materials that are the subject of the Florida state court's order compelling production. If the *Florida Health Sciences* plaintiff is in possession of any CVS MDL discovery material designated as CPHI ***other than*** the CVS prescription records that are the subject of the *Florida Health Sciences* court's order, then plaintiffs' counsel shall immediately: (1) destroy those materials, or (2) ask CVS to certify that its redactions have removed all CPHI, as discussed in the last paragraph of this Order.

for MDL Counsel to raise the issue with the Special Master. MDL Counsel shall not simply assume the CPHI designation may be ignored because of existing redactions.

IT IS SO ORDERED.

/s/ David R. Cohen
DAVID R. COHEN
SPECIAL MASTER

Dated: April 14, 2025