

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

<b>IN RE: NATIONAL PRESCRIPTION</b>	)	<b>MDL 2804</b>
<b>OPIATE LITIGATION</b>	)	
	)	<b>Case No. 1:17-md-2804</b>
<b>THIS DOCUMENT RELATES TO:</b>	)	
	)	<b>SPECIAL MASTER COHEN</b>
	)	
<i>PBM Cases</i>	)	<b>DISCOVERY RULING NO. 27</b>
	)	<b>REGARDING OPTUM'S</b>
	)	<b>CONFIDENTIALITY DESIGNATIONS</b>

This matter is before the Special Master upon the parties' request to resolve disputes regarding whether OptumRx (Optum) has properly designated certain produced documents as "Confidential" or "Highly Confidential—Attorneys' Eyes Only" (AEO). The parties resolved many confidentiality disputes through the meet and confer process, but ask the undersigned to resolve their remaining disputes. *See* discovery agenda item no. 416

The legal standard regarding confidentiality designations is set forth in Discovery Ruling No. 20. *See* docket no. 1650 at 3. In addition, prior orders in this MDL have provided definitions for "Confidential" and "Highly Confidential—Attorneys' Eyes Only." *See, e.g.* CMO-2, docket no. 441, and subsequent amending orders, docket nos. 1357 and 2688. Confidential information is defined as "information that the Producing Party in good faith believes would be entitled to protection on a motion for a protective order pursuant to Fed. R. Civ. P. 26(c)" because it contains, *inter alia*, "research, technical, commercial or financial information that the Designating Party has maintained as confidential, or such other proprietary or sensitive business and commercial information that is not publicly available." Docket no. 2688 at 2, ¶10. To be appropriately

designated as AEO, a document must contain information that, “if disclosed, disseminated, or used by or to a Competitor of the Producing Party,” creates an “*extraordinary risk of harm*,” such as “antitrust violations or commercial, financial, or business harm.” Docket no. 1357 at 1 (emphasis added); docket no. 2688 at 2.

To reach the rulings set forth below, the Special master considered several factors, including (but not limited to) the following: (1) in the case of AEO designations, whether there exists an “extraordinary risk” of actual, rather than hypothetical, competitive harm; (2) whether the information in the document is stale; and (3) whether, and the extent to which, the information was already disclosed to other parties, or was otherwise publicly available.

Furthermore, once a party challenges another party’s designation of confidentiality, the designator must carry its burden of showing and explaining with specificity how and why its confidentiality designation is appropriate. Unless the basis for the designation is obvious from the face of the document, short boilerplate explanations usually fail to carry this burden.

Having reviewed the documents and associated materials, the Special Master rules as follows:

Document Bates #	Optum’s Designation	SM Ruling on Designation
OPTUMRX_JEFFCO_0000041763	AEO	Overruled
OPTUMRX_JEFFCO_0000184280	Confidential*	Sustained
OPTUMRX_JEFFCO_0000184961	AEO	Overruled
OPTUMRX_JEFFCO_0000280447	AEO	Sustained
OPTUMRX_JEFFCO_0000314905	AEO	Sustained
OPTUMRX_JEFFCO_0000385779	AEO	Overruled
OPTUMRX_JEFFCO_0000390555	AEO	Overruled
OPTUMRX_JEFFCO_0000407867	AEO	Sustained
OPTUMRX_JEFFCO_0000443821	AEO	Sustained

OPTUMRX_JEFFCO_0000444499	AEO	Sustained
OPTUMRX_JEFFCO_0000547036	AEO	Overruled
OPTUMRX_JEFFCO_0000616539	AEO	Sustained
OPTUMRX_JEFFCO_0000661986	AEO	Overruled
OPTUMRX_JEFFCO_0590661	AEO	Sustained
OPTUMRX_MDL_000009128	AEO	Sustained
OPTUMRX_MDL_000016575	Confidential*	Sustained
OPTUMRX_MDL_000016796	Public*/Confidential*	Sustained
OPTUMRX_MDL_000032574	AEO	Overruled
OPTUMRX_MDL_000132191	AEO	Sustained
OPTUMRX_MDL_000330526	Confidential*	Sustained
OPTUMRX_MDL_000527159	AEO	Overruled
OPTUMRX_MDL_000543653	AEO	Overruled
OPTUMRX_MDL_000543657	AEO	Sustained
OPTUMRX_MDL_000967651	AEO	Sustained
OPTUMRX_MDL_001916294	Confidential*	Sustained
OPTUMRX_MDL_002366977	Confidential	Sustained
OPTUMRX_MDL_002366980	Confidential*	Sustained
OPTUMRX_MDL_003160680	Confidential*	Sustained
OPTUMRX_MDL_004438083	AEO	Sustained
OPTUMRX_MDL_005133541	AEO	Overruled

[\* Indicates revised designation by Optum]

Optum should re-examine the documents where its designations are overruled, and assign them a lower (or no) designation. The parties should meet and confer to resolve any remaining disputes.

Any party choosing to object to any aspect of this Ruling must do so on or before May 16, 2025.

**RESPECTFULLY SUBMITTED,**

/s/ David R. Cohen  
**David R. Cohen**  
**Special Master**

**Dated: May 9, 2025**