

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

IN RE: NATIONAL PRESCRIPTION)	CASE NO. 1:17-MD-2804
OPIATE LITIGATION)	
)	SPECIAL MASTER COHEN
THIS DOCUMENT RELATES TO:)	
<i>“PBM Bellwether Cases”</i>)	
)	<u>RULING REGARDING PBMs’</u>
)	<u>MOTION TO COMPEL AAPM</u>
)	<u>TO PRODUCE DOCUMENTS</u>

In connection with discovery in the two currently-pending PBM Bellwether Cases, the PBM Defendants issued a subpoena to the American Academy of Pain Medicine (“AAPM”). The Bellwether Plaintiffs allege the AAPM was a “Front Group[]” used by opioid manufacturers to “promote prescription opioid use.” Rochester docket 110, complaint at ¶643; Ogdensburg Docket no. 158, complaint at ¶641. During the relevant time period, the AAPM released publications promoting the use of prescription opioids. For example, in 1998, the AAPM, together with the American Pain Society, released a “consensus statement” entitled “The Use of Opioids for the Treatment of Chronic Pain,” in which AAPM took the position that “[m]isunderstanding of addiction and mislabeling of patients as addicts result in unnecessary withholding of opioid medications.” The AAPM also received funding from opioid manufacturers.

The PBM Defendants issued a subpoena to AAPM in March of 2026, requesting documents relating primarily to the AAPM’s public messaging on pain medications and its relationship with Purdue Pharma. AAPM initially refused to produce any documents, and the parties proceeded to

negotiate. During negotiations, AAPM identified three sets of documents responsive to the subpoena: (1) 18 documents it previously produced in another opioid-related case, *United States v. Walmart Inc.*, No. 20-cv-01744 (D. Del. 2020); (2) two documents reflecting payments from opioid manufacturers to AAPM between 2009 and 2017; and (3) AAPM Board minutes from 1996 through the present. AAPM refused to produce these documents, however, unless the PBMs agreed that: (a) production of only these documents would constitute full compliance with the subpoena, (b) the Board minutes would be redacted to show only opioid-related matters, and (c) the PBMs would pay for all of the AAPM's costs in finding, producing, and redacting the documents.

The PBMs refused these terms. After the parties reached impasse, the PBMs submitted to the undersigned a letter motion to compel. Subsequent letter briefing included a response from AAPM, a reply by the PBMs, and a permitted sur-reply by AAPM. On June 20, 2026, the Special Master issued an informal Ruling via email. AAPM then notified the undersigned it wants to object to the Ruling in part. Accordingly, the Special Master now files this formalized Ruling.¹

The informal Ruling sent by email to the parties is quoted in full below. AAPM indicates

¹ See Appointment Order at 5 (docket no. 69) (“If a Special Master issues an informal ruling or order that is not on the record (such as the resolution of a discovery dispute) either orally, via email, or through other writing, and a party wishes to object to that ruling or order, the party shall ask the Special Master to formalize the ruling or order by filing it on the docket or appearing before a court reporter.”).

it objects to the highlighted portions only; it does not object to the other portions.²

Dear Counsel:

Thank you for your submissions on the issue of the PBMs' subpoena served on the AAPM. Having reviewed your letters and exhibits, and in compliance with the dictates of FRCP 45, I rule as follows.

- On or before June 26, AAPM shall produce the 18 documents from the Walmart litigation and the 2 flow-of-funds documents.

- On or before July 6, AAPM shall produce any board minutes responsive to the Subpoena, without responsiveness or relevance redactions.

- The PBM Defendants shall review the above documents and shall work cooperatively with AAPM to determine whether: (a) these documents are sufficient, or (b) instead, Defendants believe additional document production is required.

- The PBM Defendants shall reimburse AAPM \$4,625 for the costs of compliance to date.

- If, after reviewing the produced documents, the PBM Defendants do not conclude the subpoena can be "closed out" and instead demand additional document production, the Special Master is likely to require the PBM Defendants to reimburse the AAPM for some or all of any additional costs of compliance.

Email to parties (June 20, 2026).

The Special Master now provides below his reasoning for those aspects of the Ruling that

² Specifically, AAPM stated:

The American Academy of Pain Medicine intends to comply with your ruling requiring it to produce the 18 documents from the Walmart litigation and the 2 flow-of-funds documents by tomorrow, June 26.

The Academy appreciates your order requiring Optum/Express to reimburse it \$4,625 for the costs of compliance to date. It also appreciates your statement that you may require Optum/Express to reimburse it for any additional costs of compliance if the subpoena is not closed out after the production on June 26 and the production of Board meeting minutes.

However, the Academy would like to appeal your decision refusing to permit it to redact items from 30 years of Board meeting minutes that have nothing to do with opioids or any issue in this litigation. It also would like to appeal the non-award of any of the substantial legal fees incurred by it in connection with the subpoena.

Email from Jack Bierig to Special Master (June 25, 2026).

AAPM seeks to challenge via objection to the Court.

Board Minutes

The AAPM does not assert that its Board minutes do not contain responsive information. Rather, the AAPM contends it should be permitted to redact the Board minutes and that PBMs should pay for it. Specifically:

[F]inding those minutes (to the extent that they exist) and redacting the portions that do not address opioid use or misuse would require substantial time and effort. AAPM is prepared to spend the time and effort required to do so – but only if the entities that are seeking the production will agree to pay the full costs associated with the search and redaction of any minutes that are found, including (but not limited to) any attorneys fees that are associated with that process.

Email from Jack Bierig to Ryan McEvoy (Mar. 30, 2026).

The Special Master rejected the AAPM’s position for two principal reasons. First, “relevance redactions are generally inappropriate, particularly here, where [the MDL Court’s Protective Order includes] a Highly Confidential designation that severely restricts access to this type of document.” *Weidman v. Ford Motor Co.*, 340 F.R.D. 106, 112 (E.D. Mich. 2021). Indeed, in other bellwether cases, the undersigned has ordered Pharmacy Defendants to produce information that is extremely sensitive—that is, Drug Utilization Review data that includes patients’ protected health information—in unredacted form, noting that the Court’s protective orders provide sufficient safeguards. AAPM explains it will “agree[] to provide all of [the requested Board] minutes – but with items in the minutes that have nothing to do with opioids redacted.” Surreply at 4. But AAPM does not assert the information it seeks to redact is privileged or confidential, only that it is not responsive to the PBMs’ subpoena. As with the Pharmacies’ DUR data, the Court’s Protective Order provides a sufficient safeguard to AAPM.

The second reason is that, while it is conceivable the Special Master could have instead ruled that *some* level of redaction was permitted (or, perhaps, could have helped the parties reach a negotiated resolution on redaction), AAPM has insisted that the PBMs pay *all* the costs of redaction, including attorney fees. This asks too much. It is true the Court “must protect a person who is neither a party nor a party’s officer from significant expense resulting from [subpoena] compliance,” Fed. R. Civ. P. 45(d)(2)(B)(ii), but the redaction expense AAPM identifies is unnecessary in light of the Protective Orders. At best, it might have been appropriate to give AAPM the choice of: (i) producing unredacted documents that are covered by the Court’s Protective Orders, or (ii) redacting on its own dime. But AAPM refused both options. The Special Master rejects AAPM’s insistence that it be allowed to redact and the PBMs pay for it.

Costs of Compliance to Date

As noted above, Fed. R. Civ. P. 45(d)(2)(B)(ii) requires the Court to protect AAPM from having to incur significant expense for compliance. AAPM’s CEO, Sharon Kneebone, avers that AAPM incurred \$4,625 for “the cost of my time spent in trying to comply with the subpoena,” and another \$23,850 in attorney fees. Kneebone Affid. at ¶¶12-14. In light of the parties’ descriptions of their own and the other side’s financial wherewithal, the undersigned agrees that PBMs should reimburse AAPM for Kneebone’s time. But the undersigned does not agree that PBMs should pay for AAPM’s counsel’s time, which was largely spent trying in vain to negotiate a compromise to the command to produce documents. The latter amount was essentially incurred as a result of *fighting* compliance.

Objection

Any objections to this Ruling must be filed on or before July 10, 2026. The objecting party shall include as exhibits to the objection the PBMs' letter motion to compel, AAPM's response, the PBMs' reply, and AAPM's sur-reply, all with attached exhibits.

RESPECTFULLY SUBMITTED,

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

Dated: June 26, 2026