

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:)
"PBM Bellwether Cases")
) RULING REGARDING MONROE
) COUNTY O.M.E. RECORDS

Via letter motion, the PBM Defendants move to compel the Monroe County Office of Medical Examiner to produce certain records. Having reviewed carefully all of the parties' submissions, and for the reasons stated below, the motion to compel is **DENIED**.

* * * * *

On November 25, 2024, the PBM Defendants served a subpoena on the Monroe County Office of the Medical Examiner ("OME") asking it to produce "[a]ll Documents and Communications Concerning deaths in the territory of Monroe County, including toxicology reports, autopsy reports or other investigative reports sufficient to show the cause or manner of death, Concerning Persons whose deaths were classified by [the OME] as resulting from consumption of Opioids or Illicit Drugs, including the Relevant Drugs." This request was very broad, and the County demurred. After negotiation, Monroe County agreed to produce a de-identified extract of death-record data from the OME's death investigations database ("OME Database Extract"), using agreed-upon search terms.

Several months later, pursuant to a Ruling issued by the undersigned, Rochester responded to “Interrogatory 22” asking it to identify a sample of 100 individuals who, “as a result of the PBMs’ alleged actions, (a) became addicted to Prescription Opioids or Illicit Drugs; (b) was injured as a result of consuming Prescription Opioids; and/or (c) died as a result of consuming Prescription Opioids.” Ruling at 3 (docket no. 6240). Rochester stated it identified these 100 individuals by using the OME Database Extract.

PBMs now assert they are entitled to discover “the medical examiner investigative reports, post-mortem examination reports (autopsy or otherwise), and post-mortem toxicology reports underlying the 100 deaths identified in the City of Rochester’s supplemental interrogatory response.” June 5, 2026 letter at 7. PBMs assert they need this information, which goes far more in depth than the OME Database Extract alone, “to (a) prepare for upcoming depositions, (b) complete expert discovery, and (c) test Rochester’s causation allegations before the close of discovery and trial.” *Id.* at 1.

Monroe County opposes entirely the motion to compel and responds with four arguments: (1) PBMs cannot meet the standards of New York County Law § 677, which prohibits disclosure of medical examiner files unless PBMs are “affected in a civil or criminal action by the contents of the record[s] of any investigation” or have “a substantial interest” in the records; (2) PBMs waited too long before requesting the OME records; (3) the OME records are not discoverable under Fed. R. Civ. P. 26(b)(1), because production is disproportional to the needs of the case, in light of the marginal significance of the information and the burden on OME of producing it; and (4) the OME records are not discoverable under Fed. R. Civ. P. 45, because the information PBMs seek imposes undue burden and expense on Monroe County and the OME.

The Special Master concludes the County's first and second arguments are not especially strong. Under NYCL §677(3)(b), PBMs are required to establish either that they are affected in a lawsuit by the 100 OME records they seek, or have a substantial interest in them. Given Rochester's allegation that the 100 individuals suffered harm "as a result of PBMs' alleged actions," PBMs arguably meet at least one prong of this standard. Further, given that the fact discovery deadline is about seven weeks away, the request is not untimely.

Monroe County's third and fourth arguments, however are far stronger. To contradict Rochester's allegation that the 100 identified individuals suffered drug-related harm "as a result of PBMs' alleged actions," PBMs suggest they will argue that: (1) the harm the individuals suffered was not, in fact, actually or principally *drug-related*; and/or (2) even if the individuals did suffer drug-related harm, it was not a "result of PBMs' alleged actions," as opposed to some other cause. PBMs suggest the latter argument is the one they intend to rely on more strongly.

The Special Master earlier stated that the sample of 100 individuals has only "marginal evidentiary value," but still ordered Rochester to provide it. Ruling at 2 (docket no. 6240). The OME records connected to these individuals has even less evidentiary value. As noted above, PBMs seek these records to show that: (1) the harm the individuals suffered was not, in fact, actually or principally drug-related; and/or (2) even if the individuals did suffer drug-related harm, it was not a "result of PBMs' alleged actions," but was caused by something else. The first type of showing would essentially require a mini-litigation of each of the OME's 100 medical conclusions, which would be extremely attenuated from the central issues of the case and largely a waste of jury time. Moreover, the combination of the OME Database Extract and the more-recently-obtained deposition testimony of the current and former County Medical Examiners already combine to supply copious

evidence on the question of whether and the extent to which the deaths of the 100 individuals were principally drug-related. Indeed, that evidence alone is clearly “sufficient to show the cause or manner of death” of the 100 individuals, which is what the subpoena seeks. Subpoena Request No. 1.

As for the second type of showing, it is difficult to imagine the records sought will contain any meaningfully quantum of evidence on the question. PBMs suggest that “[o]btaining the files reflecting the unique circumstances of each death that Rochester attributes to the PBM Defendants’ conduct will enable the PBM Defendants to investigate, for example, whether the alleged harm to the City or its residents is attributable, in whole or in part, to illicit drug dealers, gangs, third-party doctors, retail pharmacies, persons engaged in diversion, or other intervening causes beyond the PBM Defendants’ control.” June 22 letter at 4. But the “investigative reports, post-mortem examination reports (autopsy or otherwise), and post-mortem toxicology reports” PBMs seek will mention these “other possible causes” only in passing, if at all, and not in a causal analysis. Further, there is surely other, better evidence, including expert opinion, addressing PBMs’ possible alternative causes. In sum, the evidentiary value of the records PBMs seek is slight.

This compares to the high cost and burden on OME of producing it. As demonstrated clearly by the declaration of Chief Medical Investigator Robert Zerby, who has responded to similar but more limited records requests in other cases, the County has limited resources, and the OME would have to redirect personnel away from their normal duties to locate, review, and redact records. Zerby reasonably estimates it would take “a grand total of 200 hours of County time, or approximately five 40-hour working weeks of one full-time equivalent's (FTE’s) time,” to do the job; and he reasonably asserts the work cannot be done by outside counsel. Zerby also identifies an issue not raised by the

parties, which is that the redaction burden on OME is likely to be compounded because the parties and the OME would have to navigate tricky privilege issues encompassed by New York Civil Practice Law and Rules (“CPLR”) §4504(c).¹

Given this burden, two different Rules of Civil Procedure counsel against granting the motion to compel. Fed. R. Civ. P. 26 holds that “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 45(d)(3)(A)(iv) echoes the burden concern, stating the Court “*must* quash or modify a subpoena that * * * subjects a person to undue burden.”

Here, the records PBMs seek have relatively low importance to the central issues at stake in the bellwether cases and low importance to resolving critical issues. This compares with an onerous burden on the County and the OME to produce the records. Put simply, the discovery PBMs seek is not proportional to the needs of the case. Further, the Special Master concludes there is no viable, salutary means of *modifying* the subpoena—for example, limiting the records OME must produce, or imposing on PBMs the costs of production—rather than simply denying the motion to compel.

In sum, the Special Master concludes the PBMs’ motion to compel production of the

¹ According to Zerby, CPLR §4504(c) “creates a privilege for ‘information which would tend to disgrace the memory of the decedent.’ That privilege can be waived only ‘by the personal representative, or the surviving spouse, or the next of kin of the decedent.’ Given that the 100 files all involve individuals who died of drug overdoses, they are likely to contain information privileged by CPLR 4504(c),” and that information would have to be redacted or produced only after obtaining a waiver. Declaration at 19. Indeed, the “other cause” information PBMs hope to uncover may be the information most likely to be privileged.

requested OME records is not well-taken and must be **DENIED**.

Objection

Any objections to this Ruling must be filed on or before July 10, 2026, and responses to an objection must be filed on or before July 17, 2026. The objecting party shall include as exhibits to the objection all prior submissions on the topic sent to the Special Master by all parties.

RESPECTFULLY SUBMITTED,

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

Dated: July 1, 2026