

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

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

City of Rochester v. Purdue Pharma L.P.,
Case No. 19-op-45853 (Track 12)

MDL 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**ORDER SUSTAINING-IN-PART
PBM OBJECTION TO RULING
REGARDING MONROE COUNTY
OFFICE OF MEDICAL EXAMINER**

Before the Court is PBM Defendants’ Objection to Discovery Ruling Regarding Motion to Compel Production of Medical Examiner Records. Docket no. 6625. Non-Party Monroe County filed a Response. Docket no. 6635. For the reasons and to the extent described below, the PBMs’ Objection is Sustained-in-Part and Overruled-in-Part.

On July 1, 2026, the Special Master formalized a ruling denying the PBMs’ letter motion to compel production from the Monroe County Office of the Medical Examiner (“OME”) of “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.” Docket no. 6618 at 2 (“Ruling”) (quoting June 5, 2026 ltr. br. at 7 (docket no. 6626-1)). The Special Master reasoned that “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.” Ruling at 5. The primary reason the Special Master concluded the burden on the County

would be onerous was because “the OME would have to navigate tricky privilege issues encompassed by New York Civil Practice Law and Rules (“CPLR”) §4504(c).” Ruling at 4.

In their Objection, the PBMs assert that the records are highly relevant, the burden on OME relatively low, and the Special Master failed to consider alternatives to complete denial. With respect to the Special Master’s burden analysis, the PBMs assert that producing the records would not be unduly burdensome because CPLR § 4504(c), and its attendant privilege issues, do not apply to the OME records they seek. Rather, the PBMs assert, § 4504(c) “applies only to ‘information’ that a treating physician ‘acquire[s] in *attending a patient* in a professional capacity, and which was necessary to enable him to act in that capacity.’” Objection at 12–13 (quoting CPLR § 4504(a)). Thus, the PBMs contend, “Section 4504 does not apply to medical examiner records because there is no ‘physician-patient relationship between the decedent and the coroner.’” *Id.* (quoting *Doe v. State*, 579 N.Y.S.2d 822, 823 (N.Y. Ct. Cl. 1991)).

In response, OME explains that “the Medical Examiner’s files also contain, for example, medical records, information about prescriptions the decedent was taking, police reports, tests of drug paraphernalia performed by the Crime Lab, microbiology reports, genetic testing, microscopic examinations, notes, and photographs.” Response at 19. OME adds that “any information from the decedent’s medical records that is included in the OME files would be privileged under New York [CPLR § 4504].” *Id.* at 20.

The Court is disappointed by the conduct of both parties in attempting to resolve this dispute. The amount of briefing expended by both sides quarreling over the procedural posture of this issue is unbecoming of officers of the Court. Both sides accuse each other of adding new arguments and information in their respective rebuttal briefs, and both sides, rather than working

together with the Special Master to efficiently come to a compromise position to resolve their dispute, insisted instead on staking out divergent, strident positions.

On the merits, the Court agrees with the Special Master's assessment that the relevance of the medical examiner reports is extremely low. The Court also agrees that the burden on OME of producing *everything* the PBMs seek is quite high. Under the Federal Rules, matters are not discoverable where "the burden or expense of the proposed discovery outweighs its likely benefit," Fed. R. Civ. P. 26(b)(1), and the Court "must quash or modify a subpoena that . . . subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A)(iv).

In the last sentence of their Objection, the PBMs offer, for the first time, the following compromise: "in the event the Court determines that [production of the requested medical examiner records] would impose undue burden, the PBM Defendants request that it order the County to produce at least the investigative reports for these 100 records." Objection at 15. According to Mr. Zerby, the Chief Medical Investigator at OME, "an investigative report typically consists of two to five pages, not including exhibits and other materials in the investigative record which are typically voluminous." Decl. of Robert Zerby at ¶ 13 (docket no. 6627-3).

Accordingly, the Court orders as follows: OME shall produce the investigative reports, exclusive of exhibits and other materials, for each of the 100 individuals identified by Rochester. That will limit OME's production, and thus its burden, to between 200 and 500 total pages. Both parties agree that some privacy-related redactions will still be appropriate, but production of just the investigative records avoids the complex privilege issues associated with CPLR § 4504. After the investigative reports are produced, if the PBMs make a showing that a particular report warrants discovery of the complete record for that individual, the Court will permit them to obtain

that record. However, the PBMs must bear the full cost of production for that record, including any necessary privilege redactions, and for any further discovery relating to this issue.

IT IS SO ORDERED.

/s/ Dan Aaron Polster July 20, 2026
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE