

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF LOS ANGELES

3
4) CASE NO. JCCP No. 4247
5 Coordination Proceeding) Assigned to the Honorable Victoria G. Chaney
6 Special Title (Rule 3.550(c))) -- Department 324
7 *Vioxx*® Cases) ORDER REGARDING *PRIMA FACIE*
8 This Document Applies to All) EVIDENCE OF USAGE, INJURY AND
9 Individual VIOXX® Cases) CAUSATION
10 _____)
11

12 This Order requires all parties who are plaintiffs represented by counsel, with
13 personal injury claims pending in Case No. JCCP 4247 (“Plaintiff” or “Plaintiffs”), as of
14 November 9, 2007 to produce specified information regarding their claims, unless the claim is
15 eligible for, and has been submitted to the Resolution Program. This Order, however, does *not*
16 apply to plaintiffs who filed claims after November 9, 2007 (“Post 11.09 Plaintiffs”). Post 11.09
17 Plaintiffs are covered by a separate order, Order No. _____.
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1 **I. PRESERVATION NOTICE REQUIREMENT**

- 2 A. Within sixty (60) days of entry of this Order, counsel for a Plaintiff subject to this
3 Order shall notify the following individuals or entities, by registered mail, that
4 they may have records relevant to the Plaintiff's claim in this Coordinated
5 Proceeding ("Claim") and that any records relating to the Plaintiff must be
6 preserved pursuant to Case Management Order No. 5 entered by this Court on
7 December 14, 2003 (the "Notice"), pending collection by the Plaintiff:
- 8 1. All Pharmacies that dispensed any medications to the Plaintiff for the
9 period from January 1, 1995 to the present;
 - 10 2. All Physicians, Medical Facilities, other Healthcare Providers and/or other
11 persons ("Other Providers") who Plaintiff claims provided any samples of
12 Vioxx to the Plaintiff;
 - 13 3. All Physicians, Medical Facilities and/or other Healthcare Providers who
14 prescribed Vioxx for the Plaintiff;
 - 15 4. All Physicians and/or other Healthcare Providers who treated Plaintiff for
16 the period from January 1, 1995 to the present; and
 - 17 5. If Plaintiff is seeking lost wages, all of his employers for the period from
18 three years prior to the date for which he is seeking lost wages through the
19 last day for which Plaintiff is seeking lost wages.
- 20 B. A copy of Case Management Order No. 5 shall be attached to the Notice and all
21 copies of the Notice shall be preserved by Counsel for Plaintiff for so long as the
22 claim remains pending in this Proceeding.
- 23 C. By no later than March 15, 2008, Plaintiff shall serve a statement listing the names
24 and addresses of all individuals or entities to which Notices were sent, along with
25 copies of the Notices and a signed certification that the Notices were sent as
26 required by this Order. Service by Plaintiffs shall be made in accordance with the
27 service procedures of Case Management Order No. 5.
- 28 D. Plaintiffs who fail to fully comply with the requirements of this Order shall be
given notice by e-mail or fax from Defendants' Liaison Counsel or his designee
and shall be provided thirty (30) additional days to cure such deficiency ("Cure
Period"). No other extensions will be granted, except for good cause shown. If
Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Liaison
Counsel shall file a Motion to Show Cause why the claim should not be dismissed
with prejudice. Plaintiff shall thereupon have thirty (30) days to respond to the
Notice to Show Cause. Any failure to respond to the Motion within the required

1 period of time shall lead to the dismissal of the claim with prejudice, except for
2 good cause shown.

- 3 E. Plaintiff may not seek to introduce into evidence at trial any document or
4 information asserting that Vioxx was dispensed by a pharmacy or that Vioxx was
5 provided to the Plaintiff as a sample if a Notice were not sent to the Plaintiff's
6 pharmacy, physician, other healthcare provider and/or Other Provider as required
7 by this Order, except upon leave of court for good cause shown. A Plaintiff who
8 fails to comply with this Order may also be subject to other sanctions or orders.

9 II. DISCOVERY REQUIREMENTS

- 10 A. All Plaintiffs who claim to have suffered an injury as a result of taking Vioxx must
11 produce all of the information described in this Section II unless (a) the injury
12 alleged is a Myocardial Infarction ("MI"), sudden cardiac death ("SCD"), or
13 Stroke as those terms are defined, infra., in Section III, and (b) the Plaintiff has
14 submitted the claim to the Resolution Program:

- 15 1. All pharmacy records regarding the dispensing of drugs to the Plaintiff for
16 the period from January 1, 1995 to the present, along with a signed
17 certification from the respective pharmacy or pharmacies indicating that the
18 production is complete;
- 19 2. If any death is claimed, a statement to that effect along with a copy of the
20 death certificate and autopsy report, if one was performed;
- 21 3. All medical records relating to the Plaintiffs from all healthcare providers
22 requested in the Amended and Supplemental Plaintiff Profile Form for the
23 period from January 1, 1995 to the present, along with a signed certification
24 from each healthcare provider who has records relating to the Plaintiff
25 indicating that all records in the possession, custody or control of the
26 Provider have been produced. Service by Plaintiffs shall be made in
27 accordance with the service procedures of Case Management Order No. 3.
- 28 4. For Plaintiffs alleging a MI, SCD or Stroke Injury, an Amended and
Supplemental Plaintiff Profile Form" ("ASPPF") and authorizations in a
form attached hereto as Exhibit A unless Plaintiff has as of the date of this
Order submitted a Plaintiff Profile Form. Service by Plaintiffs shall be
made in accordance with the service procedures of Case Management
Order No. 3.
5. For Plaintiffs not alleging a MI, SCD or Stroke Injury, an Amended and
Supplemental Plaintiff Profile Form" ("ASPPF") and authorizations in the

1 forms attached hereto as Exhibit A. Service by Plaintiffs shall be made in
2 accordance with the service procedures of Case Management Order No. 3.

3 6. Answers to the Interrogatories set out as Exhibit B. Service by Plaintiffs
4 shall be made in accordance with the service procedures of Case
5 Management Order No. 3.

6 7. An affidavit signed by the Plaintiff (i) attesting that records have been
7 collected from all pharmacies that dispensed drugs to, or for, the Plaintiff;
8 (ii) attesting that all medical records described in paragraph (3) above have
9 been collected; and (iii) attesting that all records collected pursuant to
10 subparagraphs A (1), (2) and (3) have been produced pursuant to this Order,
11 along with an index or list identifying the source of the records. Service by
12 Plaintiffs shall be made in accordance with the service procedures of Case
13 Management Order No. 3.

14 8. A case specific expert report from a medical expert attesting (i) to a
15 reasonable degree of medical probability that the Plaintiff suffered an injury
16 and (ii) that Vioxx caused the injury. The case specific expert report must
17 include (i) an explanation of the basis of the attestation that Vioxx caused
18 the Plaintiff to suffer the injury, (ii) an identification of any other causes
19 that were considered in formulating the opinion, (iii) a description of the
20 specific injuries allegedly suffered; (iv) a description of the specific
21 medical findings that support the diagnosis of those injuries; and (v)
22 identification of all documents relied on by the expert in forming his
23 opinions.

24 B. If any of the documents described in paragraphs (A) (1), (2) and (6) above do not
25 exist, the Plaintiff shall state that fact in his or her affidavit and the reason why
26 they do not exist and provide a certified "No Records Statement" from the
27 pharmacy or healthcare provider.

28 C. Plaintiffs shall produce the items set forth above in this Section II in accordance
the following schedule:

1. For Plaintiffs whose last name begins with the letters A through L, on or
before May 1, 2008;

2. For Plaintiffs whose last name begins with the letters M through Z, on or
before July 1, 2008.

3. Service by Plaintiffs shall be made in accordance with the service
procedures of Case Management Order No. 3.

1 4. Plaintiffs whose cases are subsequently transferred or removed to this Court
2 shall produce the items set forth above within sixty (60) days of transfer
3 (measured from the date of filing in this Court of the Transfer Order) of
4 their case to this proceeding.

5 D. Plaintiffs who fail to fully comply with the requirements of this Order shall be
6 given notice by e-mail or fax from Defendants' Liaison Counsel or his designee
7 and shall be provided thirty (30) additional days to cure such deficiency ("Cure
8 Period"). No other extensions will be granted, except for good cause shown. If
9 Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Liaison
10 Counsel shall file a Motion to Show Cause why the claim should not be dismissed
11 with prejudice. Plaintiff shall thereupon have thirty (30) days to respond to the
12 Notice to Show Cause. Any failure to respond to the Motion within the required
13 period of time shall lead to the dismissal of the claim with prejudice.

14 E. Nothing in this Order abrogates or replaces each Plaintiff's obligation to submit
15 the Plaintiff Profile Form, authorizations, and other materials required under Case
16 Management Order No. 4A and a later Court Order regarding the supplemental
17 Profile Form. The Plaintiff need not re-submit a Plaintiff Profile Form if one has
18 already been submitted with respect to his or her claim.

19 III. DEFINITIONS

20 A. For purposes of this Order only, "Myocardial Infarction" ("MI") is defined as
21 follows:

- 22 1. A final or discharge diagnosis in contemporaneous medical records of a
23 myocardial infarction or heart attack; or
- 24 2. A diagnosis or affirmative finding in the contemporaneous medical records
25 (e.g., a report of consultation) by a cardiologist of a myocardial infarction
26 or heart attack; or, within 14 days of discharge from the hospitalization
27 related to the Event, an independent diagnosis by a treating cardiologist that
28 the Event was a myocardial infarction or heart attack; provided that, in
either instance, the final or discharge diagnosis does not rule out a
myocardial infarction; or
3. If the medical records are silent as to whether or not plaintiff had a
myocardial infarction, new pathological Q waves in two or more
contiguous leads; or
4. If the medical records are silent as to whether or not plaintiff had a
myocardial infarction, (i) Signs and symptoms described in medical records
of a heart attack (including but not limited to chest pain, pressure, tightness

1 or discomfort, pain or discomfort in the upper areas of the body including
2 but not limited to one or both arms, the back, neck, jaw or stomach, or
3 shoulders; shortness of breath, weakness, dizziness, cold sweat, or
4 excessive sweating, nausea, weakness, fatigue, loss of consciousness or
5 posture, lightheadedness, feeling of faintness, heart-burn or indigestion
6 sensations, feelings of restlessness or anxiousness, a sense of impending
7 doom, disorientation, lips, hands or feet turning slightly blue, abnormal
8 heart rhythms (arrhythmias), or loss of consciousness, cardiac arrest, blood
9 pressure fluctuations or drops requiring medical intervention) or new
10 ischemic ST-T wave changes on an electrocardiogram in two or more
11 contiguous leads; AND (ii) a rise and fall of cardiac enzymes that includes
12 a rise in serum creatine kinase MB (CK-MB) to greater than two times the
13 upper limit of normal (based on the individual's laboratory's normal range)
14 or a rise in serum cardiac troponin greater than two times the upper limit of
15 normal that a given laboratory considers diagnostic for infarctions. (In the
16 event that the laboratory records do not reflect the normal diagnostic range
17 for troponin that is utilized by that specific laboratory, a rise in the troponin
18 to greater than 1.5 ng/ml shall be deemed to indicate a myocardial
19 infarction.)

14 5. An event is not a myocardial infarction under definition Nos. 3 or 4 above,
15 if myocardial infarction is ruled out as a diagnosis in the discharge
16 summary or by an in-house cardiology consult at the time of the event, or
17 the final diagnosis is angina or unstable angina.

17 B. For purposes of this Order only, "Sudden Cardiac Death" ("SCD") is defined as a
18 a witnessed instantaneous or near-instantaneous unexplained death that occurs
19 without warning or within one hour of non-diagnostic symptoms, or, an
20 unwitnessed, unexpected sudden death in which criteria for a fatal coronary,
21 cerebrovascular event or other cause or event are not met.

21 C. For purposes of this Order only, "Ischemic Stroke" ("Stroke") is defined as:

- 22 1. A final or discharge diagnosis in contemporaneous medical records of an
23 ischemic stroke or ischemic cerebrovascular event or accident (i.e.,
24 ischemic stroke, intracranial thrombosis, cerebral embolism, thrombotic
25 stroke, embolic stroke, lacunar infarct, lacunar stroke, thrombotic
26 occlusion, cerebrovascular event or accident that is not a primary
27 hemorrhagic event, and cerebral infarction; or a hemorrhagic stroke that is
28 secondary to the terms previously listed); or
2. If the final or discharge diagnosis is silent as to whether or not plaintiff had
an Ischemic Stroke, a diagnosis or affirmative finding in the
contemporaneous medical records (e.g., a report of consultation) by a

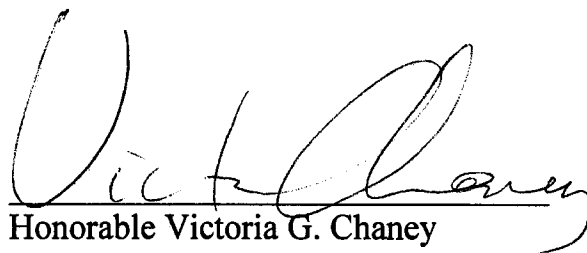
1 neurologist of an Ischemic Stroke; or, within 14 days of discharge from the
2 hospitalization related to the Event, an independent diagnosis by a treating
3 neurologist that the Event was an Ischemic Stroke.

- 4 3. For purposes of this Order only, an Event is not an Ischemic Stroke if:
- 5 a) stroke or cerebrovascular accident is ruled out as a diagnosis in the
6 discharge summary or by a treating neurologist within 14 days of
7 discharge from the hospitalization related to the Event;
 - 8 b) hemorrhagic stroke or hemorrhagic cerebrovascular accident is the
9 diagnosis in the discharge summary or by a treating neurologist
10 within 14 days of discharge from the hospitalization related to the
11 Event. This definition does not include a hemorrhagic stroke that is
12 secondary to an Ischemic Stroke, or
 - 13 c) transient ischemic attack is the diagnosis in the discharge summary
14 or is the diagnosis of a treating neurologist within 14 days of
15 discharge from the hospitalization related to the Event.

16 IV. PENALTIES FOR FRAUD AND DECEPTION

17 Any Plaintiff (and his or her attorneys) who submits false or intentionally
18 misleading information, or otherwise attempts to satisfy the documentation requirements of this
19 Order through any form of deception, dishonesty or fraud shall be subject to appropriate
20 sanctions (including monetary sanctions and costs) and dismissal with prejudice pursuant to
21 California Code of Civil Procedure § 2023.
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23 DATED: 11/9/07

24 
25 Honorable Victoria G. Chaney
26 Judge of the Superior Court
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