

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: TYLENOL (ACETAMINOPHEN)
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION**

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**MDL NO. 2436
2:13-md-02436
HON. LAWRENCE F. STENGEL**

***THIS DOCUMENT RELATES TO ALL
CASES***

**CASE MANAGEMENT ORDER NO. 10(a)
(Records Collection-**

Supplementing and Implementing Certain Provisions of CMO No. 10)

This Order supplements and implements *Case Management Order No. 10*. (“CMO No. 10”), Section II regarding the Authorization for the Release of Records.

A. PLAINTIFFS’ ACCESS TO RECORDS COLLECTED BY THE DEFENDANTS

1. Consistent with the terms CMO No. 10, Section II, Plaintiffs’ counsel shall have the opportunity to receive notice, and to review and obtain copies of records collected by the Defendants by the means specified in Section B below, through the use of a record copy service vendor. *The Marker Group, Inc.*, has been retained by Defendants McNeil and Johnson & Johnson as the record copy service vendor to perform the service.

2. Upon establishment of a *User Account* by counsel representing a particular Plaintiff(s), as set forth in Section B below, the authorized user will receive E-mail alerts on each date that new records for the Plaintiff(s) associated with that account are posted to the on-line repository for access by the counsel representing such Plaintiff(s).

3. Defendants shall ensure that *The Marker Group, Inc.* posts such records reasonably promptly after receipt of the records, and generally within 24 hours of receipt.

Defendants shall ensure that *The Marker Group, Inc.* has each page of any record retrieved labeled “**Confidential.**” The cover page for all records shall also bear: “**Confidential Subject to Protective Order.**”

4. The E-mail alert will identify Plaintiff(s)’ name(s), and the name(s) of the records provider(s) from whom the records were obtained, the type of record (including whether the record is a no record statement from the provider) and the number of pages of records.

5. There are two Options available for Plaintiffs to obtain copies of the records that are retrieved as set forth on Exhibit “A” attached hereto. The Fees for both Options are set forth on Exhibit “A” and shall not increase during the course of this litigation.

B. ESTABLISHMENT OF USER ACCOUNTS

6. Plaintiff(s)’ counsel may establish *User Accounts* by contacting Angela Hill at GoMarkers@marker-group.com. Plaintiff(s)’ counsel will be required to provide:

a. A list of the name(s) and E-mail address(es) of each individual in the law firms representing Plaintiff(s) who are authorized to access the Record Repository, so that a separate *User Account* can be established, and a username and password can be generated and communicated, for each individual person for whom authorized access is requested. The one-time user fee to establish access shall cover all individuals in the law firm representing a plaintiff of the law firm;

b. A listing of the Plaintiff(s) for whom those counsel are attorneys of record, including for each individual person the following information: last name, first name, middle name and maiden name if applicable, docket number, case caption, and jurisdiction where the case is currently pending. If a Plaintiff is representing an estate, the decedent as well as the estate administrator/representative must be identified. If the Plaintiff has a common name,

an additional identifier may be requested to ensure access is granted only to that specific person. This list must be updated by Plaintiffs' counsel with *The Marker Group, Inc.* during the first week of each month with respect to any cases newly filed during the prior month and/or any corrections that may need to be made;

c. The name, title, and E-mail address of the primary contact person for Plaintiff(s)' counsel for interactions with *The Marker Group, Inc.*; and,

d. The name and E-mail address of the person to whom receipts for credit card charges should be directed and which of the two payment options (*Option 1* or *Option 2* as set forth on Exhibit "A") are desired.

C. PSYCHOTHERAPY RECORDS¹ (a/k/a **Mental Health Records)(**"The 5-Day Review Period"**)**

7. The following provisions pertain only to receipt of Psychotherapy Records as defined herein. Upon receipt of Psychotherapy Records, *The Marker Group, Inc.*, shall:

a. "Quarantine" the records for a period of time to afford Plaintiff(s)' counsel an opportunity to receive and review the records;

b. Notify both Parties (Defendants and the counsel for that individual Plaintiff by E-mail (not attaching the records)) that Psychotherapy Records have been received;

c. Send via Federal Express Ground (paid for by Defendants) the Psychotherapy Records to that Plaintiff's individual counsel so that Plaintiff's counsel shall have

¹ As used herein and in CMO-10, the term "Psychotherapy records" means any records from a mental health professional including, but not limited to, any psychiatrist, physician, psychologist, therapist, social worker, counselor or other medical or mental health professional that Plaintiff(s) identify by answering "Yes" to question VII(3) in the PFS (stating that he/she was treated for a psychological/mental/emotional condition prior to the use of the Tylenol/acetaminophen products at issue in the lawsuit) and provides an Authorization pursuant to CMO-10, Section II, 6(h).

the opportunity to review the records for five (5) business days from the day they are received by Plaintiff's counsel, as set forth in CMO-10, Section II, 6(h).

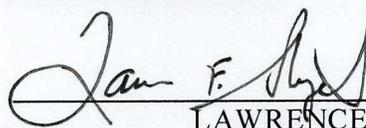
8. During the Quarantine, *The Marker Group, Inc.* shall not release or give access to the Defendants of any of the Psychotherapy Records and shall not upload the records to the online repository.

9. If the Plaintiff fails to file a *Motion for Protective Order* in the specific member action on or before the end of the 5-Day Review Period, *The Marker Group, Inc.* is authorized without further notice to release the Psychotherapy Records to Defendants and upload them to the online record repository.

10. If the Plaintiff files a *Protective Order*, *The Marker Group, Inc.* shall maintain the Quarantine until further Order of this Court or agreement of the parties via written agreement signed by counsel for Plaintiff and Defendants, and/or withdrawal of Plaintiff of Motion for Protective Order.

11. All provisions of CMO-10 other than those amended and supplemented herein shall remain unchanged and in full force and effect.

IT IS SO ORDERED



LAWRENCE F. STENGEL, J.

MARKER GROUP

PROFESSIONAL LITIGATION SUPPORT

EXHIBIT A

Options of Ordering Records

Records Received Option 1: CD of Records

When records are received by The Marker Group, an email notification will be sent to your firm of all records received that day. These e-mails should be reviewed by your firm to determine which records your firm would like to order, if any. You will have the option of picking and choosing which records you would like, but must order the entire set of records (we will not go through a record set and pull out only specific documents). The records ordered will be burned to a CD, shipped and billed to the requestor. This allows your firm to specifically order only the sets of records in which you are interested. The fees for this service are listed below.

CD/Handling Fee	\$20.00
Per Page Fee	\$0.15
Shipping Fee	At Cost

Records Received Option 2: The Marker Group's Opposing Counsel Repository

The Marker Group's Opposing Counsel Repository provides opposing counsel access to real-time status updates and record availability. Your firm may request access to records via online repository. We call this the "any and all" option because you will not have the option of ordering just a single set of records. You will be granted access to and charged the per page cost for all records posted to the web on the case(s) selected for the repository. When cases are added to your firm's access, you will be charged for all existing records that are available on that case at that time and any records uploaded while you have access from that point forward. You will receive a daily notification of the records collected, which serves as your notice to login and view, print or download the records available on the repository. With this option, you can view, print and download the records as often as you need. Typically one user is set up per firm and the login information can be shared so that anyone with that firm can access the information from anywhere. The fees for the service are listed below.

One-time User Set-Up Fee	\$20.00
Per Page Fee	\$0.10

Account and Payment Terms

Your firm must be in good standing with our company in order to be approved for Online Repository access. If your firm has an overdue balance, the account must be brought current in order to receive records. If your firm is not in good standing, you will only have the option to order CDs of records and may be required to pay in advance for records requested. Approval for online access is at the discretion of our Accounting Department.

Payment Terms are net thirty (30) days. Invoices over thirty (30) days are considered overdue. Overdue invoices are subject to a penalty of 1.5% per month (18% annually) or the maximum allowed by Texas law, whichever is lesser. Failure to meet these requirements may result in suspension of service and a reactivation fee will apply.

In the event that you opt out of online access to records, you will be provided with one CD containing all records, for which you have already paid, at no additional cost to your firm. Subsequent requests for copies of records on CD will incur the standard fees presented in Records Received Option 1 above.