

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re Viagra Products Liability Litigation

MDL No. 06-1724 (PAM)

This Order Relates to All Cases.

ORDER

This matter is before the Court on Defendant Pfizer Inc.’s Motion for Order to Permit Limited Disclosure of Confidential Document. The underlying allegations in this case are that one of Pfizer’s drugs, Viagra, caused Plaintiffs to suffer vision loss from a disorder known as non-arteritic anterior ischemic optic neuropathy (“NAION”).

Plaintiffs’ general causation expert was Dr. Gerald McGwin. Dr. McGwin was the principle author of a study published by the British Journal of Ophthalmology (the “Journal”) in February 2006, entitled Non-Arteric Ischaemic Optic Neuropathy and the Treatment of Erectile Dysfunction (the “McGwin Study”).¹ During the course of this litigation, the University of Alabama Birmingham (“UAB”) produced the underlying source documents and data for the McGwin Study. The source documents were produced pursuant to a protective order and are not publicly available. In an August 19, 2009, Order, the Court found that the underlying source documents and data contained inconsistencies that undermined the

¹ Gerald McGwin, et al., Non-Arteric Ischaemic Optic Neuropathy and the Treatment of Erectile Dysfunction, 90 British J. Ophthalmology 154 (2006).

reliability of the McGwin Study. In an opinion that is available to the public, the Court set forth the reasons that McGwin's opinion was not reliable enough to provide a casual connection between NAION and Viagra use. (August 19, 2009, Order (Docket No. 607).)

After receiving the source documents, Pfizer contacted the Journal to inform the publication that it believed that the source documents undermined the reliability of the McGwin Study. However, because the source documents were confidential, Pfizer could not provide the Journal with those documents without the permission of UAB. The Journal referred the matter to the Committee on Publication Ethics ("COPE"), an organization designed to deal with questions of scientific integrity on behalf of medical journals.

Pfizer now asks this Court for limited disclosure of the source documents in order to permit the Journal and COPE to look at the data behind the McGwin Study. Pfizer argues that permitting the Journal to review the data is in the interest of public health. Pfizer also argues that after the Court's August 19, 2009, Order, much of the information is public knowledge, rendering any confidentiality concerns moot. UAB asks that the documents not be released to the Journal by Pfizer, but indicates that it will comply with any request from COPE for documents.

Given the current uncertain status about the resolution of this case, a final decision on the issue of whether a limited disclosure should be permitted is not appropriate at this time. UAB has promised to provide COPE with any documentation that organization needs, and the Court presumes UAB will follow through with that promise.

Pfizer points to one sentence in correspondence it received from the Journal, stating that COPE may wait for the Court to release documents before conducting its review. But nothing in the record suggests that COPE itself has indicated that it will wait for Court action to review the McGwin Study. As Pfizer has pointed out, much of the information is publicly available in the transcripts and orders produced during the course of this litigation. This information should permit COPE to identify what information would be of use in its review. Provided that UAB is willing to provide any source documents and data to COPE, the Court's interference in the matter should not be necessary. Nevertheless, given the current status of the case, denial of the motion will be without prejudice.

Accordingly, **IT IS HERE BY ORDERED that** Defendant's Motion for Order to Permit Limited Disclosure (Docket No. 590) is **DENIED without prejudice.**

Date: Wednesday, April 14, 2010

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge