

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON**

**IN RE: ONGLYZA (SAXAGLIPTIN) AND
KOMBIGLYZE XR (SAXAGLIPTIN AND
METFORMIN) PRODUCTS LIABILITY
LITIGATION**

Master File No. 5:18-md-2809-KKC
MDL No. 2809
All Cases

**ORDER REGARDING REMOTELY
CONDUCTED DEPOSITIONS**

This matter is before the Court upon Defendants Bristol-Myers Squibb Company, AstraZeneca Pharmaceuticals LP, and McKesson Corporation's expedited motion for entry of a protocol governing remote depositions. The motion having been duly considered, and for good cause shown, the Court hereby ORDERS that depositions conducted by remote video technology shall be governed by the following terms, conditions, and requirements:

Handling of the deposition platform:

- 1) To ensure the confidentiality of the deposition and any exhibits: (i) only those persons who are permitted pursuant to the Protective Order entered in this case shall participate in, listen to, or view the deposition or exhibits; (ii) the deposition platform must be secured by password or comparable restriction.
- 2) The court reporter or videographer will be responsible for hosting the videoconference and providing the necessary instructions to attend.
- 3) The official video recording by the court reporter or videographer will "Pin" the screen of the deponent so that the video recording will remain stationary at all times on the witness. However, if documents are shared electronically, it will be side-by-side with the witness so that the witness can always be seen on the recording.
- 4) The private 1-on-1 chat feature will be disabled by the court reporter or videographer, who will be the host of the meeting.

Conduct during the deposition:

- 5) The deponent will be sworn in remotely and the parties waive any objection that the remote swearing in of the deponent is invalid.
- 6) The deponent and all attorneys must be in separate physical locations and on separate devices with video so that their faces can be seen at all times. The deponent shall not be physically located at a law firm. The deponent will pan their video around the room before the deposition starts so that everyone attending remotely can see the room setup, i.e., if anyone else is in the room, etc.
- 7) Once the deposition starts, the deponent is to have their device positioned so his or her camera shows them from the waist up and it must stay that way with the exception of viewing any exhibits.
- 8) The deponent will not wear a mask during the deposition.
- 9) During live testimony on the record, attorneys shall not communicate in any manner with the deponent in any way that cannot be heard or seen by all participants to the deposition. This includes private messages of any kind. Such prohibition shall not affect the right of the deponent and her/his lawyer(s) to communicate in private off the record to the extent otherwise permitted under the applicable rules.
- 10) The deponent will confirm that he does not have any other devices near him and that his cell phone is not within reach or visible to him.

Handling of documents and exhibits:

- 11) The parties agree that any documents the deponent is directed to bring to the deposition be provided to the noticing party two days prior to the deposition in electronic format for use at the deposition.

- 12) The party taking the deposition shall deliver complete hard copies of all potential exhibits to be used to the deponent and the defending attorney so that they are received at least 24 hours before the scheduled start of the deposition. Each exhibit shall be in hard copy in a separate numbered envelope or binder, which may be sealed. Except as provided below, parties are prohibited from using, introducing or asking questions about exhibits or other documents that were not provided by this deadline. This limitation does not apply to defending counsel for purposes of follow-up examination.
- 13) Hard copy exhibits provided in sealed envelopes or other containers may not be opened by the deponent and his/her counsel until instructed to do so by the questioning attorney. Any unused sealed envelopes shall be destroyed or returned, as directed by the questioning attorney, upon completion of the deposition.
- 14) Alternatively, counsel may present the exhibit electronically using a shared screen at the time of the deposition. An exhibit provided only electronically in this manner must be made available to the deponent and the defending attorney to review in its entirety, and the witness must be afforded the independent ability to review the exhibit in its entirety, and the witness must be afforded the independent ability to control manipulation of the document (scrolling, etc.) to facilitate that review.

Entered this 6th day of October, 2020.



Signed By:

Matthew A. Stinnett

MAS

United States Magistrate Judge