

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE: SMITH & NEPHEW BIRMINGHAM *
HIP RESURFACING (BHR) HIP
IMPLANT PRODUCTS LIABILITY
LITIGATION *

* Civil Action No. 17-md-2775,
BHR Track

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Order

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. Smith & Nephew's motion for protective order to limit *ex parte* contacts, (ECF No. 681), is denied in part and granted in part;
2. The plaintiffs' *ex parte* contacts with Smith & Nephew are not limited to non-liability issues, but the plaintiffs must disclose five days before a deposition of a treating physician, or if the communication occurred within five days of a deposition, within a reasonable time after the communication:
 - a. When the communication occurred;
 - b. Its estimated duration;
 - c. The participants to each communication; and
 - d. Any documents or electronically stored information shown, provided to, or discussed with the physician.
3. Smith & Nephew may contact on an *ex parte* basis up to 25 treating physicians for the purpose of retaining a reasonable number of experts subject to the following conditions:
 - a. Before engaging in substantive conversations, counsel must advise the physician of the defendant's interest in potentially retaining him or her as an expert, and the physician must affirmatively express an interest in being an expert for Smith & Nephew.
 - b. A physician may not work on a case involving his or her current or former patient.
 - c. The retained physician may not communicate with defense counsel about any of his or her current or former patients who had any of the devices at issue implanted.

d. All parties must abide by relevant state and federal laws governing patient records.

4. The Clerk shall **SEND** a copy of this Order and the accompanying Memorandum to counsel of record.

6/20/18

Date

CCB

Catherine C. Blake

United States District Judge