

FAQs on Case Management Order (“CMO”) 11 Discovery Obligations

Question 1: How do I serve the documents required by CMO 11?

Answer 1: All documents required by CMO 11 shall be served via MDL Centrality and uploaded at the following address: www.mdlcentrality.com/MDL2592.

Question 2: What is the preservation notice?

Answer 2: CMO 11 requires all plaintiffs who are litigating their claims to send a preservation notice by certified mail to the individuals and entities listed below. The notice must inform the recipients that (1) they may have records relevant to the claim of the plaintiff; and (2) any records relating to the plaintiff must be preserved, pending collection by the plaintiff. The notice must be sent to:

- All Pharmacies that dispensed any medications to the Plaintiff for the period from January 1, 2012 to the present.
- All Physicians, Medical Facilities, other Healthcare Providers and/or other persons (“Other Providers”) who Plaintiff claims provided samples of Xarelto to the Plaintiff.
- All Physicians, Medical Facilities, and/or other Healthcare Providers who prescribed Xarelto for the Plaintiff.
- All Physicians and/or other Healthcare Providers who treated plaintiff for the period January 1, 2012 to the present.

Question 3: How do I serve the preservation notice?

Answer 3: The preservation statement should be sent by certified mail, return receipt requested. It does not have to be sent by “registered” mail.

Question 4: What is the Preservation Notice Statement?

Answer 4: CMO 11 requires that counsel for each litigating plaintiff send the following to Defendants’ counsel: (1) a list of the names and addresses of all individuals and entities who received a copy of the preservation notices identified in the response to FAQ No. 2; (2) a statement representing that all the notices required by CMO 11 were sent; and (3) copies of all the notices sent.

Question 5: If a plaintiff previously completed a plaintiff fact sheet (“PFS”), is the plaintiff required to complete a new Short Form Plaintiff Fact Sheet (“Short Form PFS”)?

Answer 5: Yes. The Short Form PFS is a new form and must be completed in its entirety. Prior to March 2019, the form PFS that plaintiffs were required to complete was the form governed by Pretrial Order (“PTO”) 13. Plaintiffs who were not selected for workup under CMO 6 only had to complete Section I of the old form PFS. The version of the “Short Form” PFS that plaintiffs must complete pursuant to CMO 11 is the newer form governed by CMO 8. As previously stated, it must be completed in its entirety.

Question 6: Does each litigating plaintiff have to submit a Short Form PFS *and* a Plaintiff Profile and Consent Form (“PPCF”)?

Answer 6: Yes, the Short Form PFS and PPCF are different documents. Both must be completed in their entirety and verified by the plaintiff. Plaintiff’s counsel must also sign the PPCF. Please note that the Short Form PFS and PPCF also require the production of certain medical records and documents.

Question 7: How do I know whether a plaintiff I represent falls in the category of plaintiffs who must serve an “*updated*” Short Form PFS and PPCF within 60 days of the conclusion of the Settlement Program enrollment period as required by CMO 11 Section II(B)(iii)?

Answer 7: As a practical matter, none of the litigating plaintiffs currently fall into this specific category of CMO 11 requiring an “updated” Short Form PFS and PPCF because none of the litigating plaintiffs previously provided a Short Form PFS and PPCF at all.

Question 8: Does a plaintiff have to reproduce any medical records that were previously produced to Defendants?

Answer 8: Previously produced records that were submitted via MDL Centrality do not have to be produced again. If a plaintiff is relying on previously produced medical records to comply with any of CMO 11’s requirements, please upload a statement to MDL Centrality signed by plaintiff’s counsel that identifies by MDL Centrality document number which previously uploaded document(s) you assert comply with CMO 11’s requirements and which of CMO 11’s requirements they satisfy.

Question 9: If a plaintiff previously produced any medical records, does the plaintiff have to produce additional medical records?

Answer 9: You are responsible for ensuring that all records required by CMO 11 have been produced. Please note that prior to March 2019, plaintiffs were only required to produce a record showing proof of Xarelto use and a record showing proof of injury. Pursuant to CMO 11, all of the records listed below must be produced. The deadlines for producing these records vary, so please consult CMO 11 for specific deadlines.

- All of Plaintiff's pharmacy records that encompass the dates of use of Xarelto and all records from all pharmacies that dispensed any medications to the Plaintiff for the period from January 1, 2012 to the present. *See* Plaintiff Profile and Consent Form Section I(D); Short Form PFS Section VI; CMO 11 Sections II(A)(i) & III.
- All records from all Physicians, Medical Facilities, other Healthcare Providers and/or other persons ("Other Providers") who Plaintiff claims provided samples of Xarelto to the Plaintiff. *See* CMO 11 Sections II(A)(ii) & III.
- All records from all Physicians, Medical Facilities, and/or other Healthcare Providers who prescribed Xarelto for the Plaintiff. *See* Plaintiff Profile and Consent Form Section I(D); CMO 11 Sections I(B)(iv) & II(A)(iii).
- All records from all Physicians, Medical Facilities, and/or other Healthcare Providers who provided any medical care and treatment associated with any alleged Xarelto-related injury. *See* Plaintiff Profile and Consent Form Section I.F.; CMO 11 Section I(B)(iv).
- All medical records required to support any claims asserted in Section II of the Plaintiff Profile and Consent Form. *See* Plaintiff Profile and Consent Form Section II.
- All medical records relating to the plaintiff's use of Xarelto and to treatment for any disease, condition, or symptom referred to in responses to any questions in the Short Form PFS or Plaintiff Profile and Consent Form. *See* Short Form PFS Section VI.
- All laboratory tests and results of blood tests performed on Plaintiff. *See* Short Form PFS Section VI.

Question 10: What is the Affidavit of Compliance supposed to say?

Answer 10: The first Affidavit of Compliance must include the following statements, assuming they are truthful (and if they are not truthful then the necessary tasks required by the Court orders have not been completed):

1. All records have been collected from all pharmacies that dispensed medications to the Plaintiff within the past 12 years and all of these records have been produced to the Defendants.
2. All medical records required to be produced by CMO 11 to date have been produced.

After the plaintiff produces the case-specific expert report and records required by Section I(B)(iii), the plaintiff will need to produce an updated Affidavit of Compliance certifying that:

1. The expert reports and all medical records required by CMO 11 have been produced.

Question 11: Who has to sign the Affidavit of Compliance required by CMO 11 Section III?

Answer 11: The plaintiff must sign the Affidavit of Compliance.

Question 12: When is the case-specific report required by CMO 11 Section II(A)(iv) due?

Answer 12: For Existing Plaintiffs (plaintiffs who filed suit on or before March 11, 2019), the case-specific report is due on January 2, 2020. For New Plaintiffs (plaintiffs who filed suit after March 11, 2019), Defendants have agreed to extend the deadline to the later of: January 2, 2020 or 120 days of the case being docketed in the MDL.

Question 13: What if a plaintiff fails to comply with any of the requirements of CMO 11?

Answer 13: Defendants will seek to dismiss with prejudice the cases of any plaintiffs who do not comply with CMO 11.