

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In Re: VIOXX

PRODUCTS LIABILITY LITIGATION

This document relates to ALL CASES

:
:
:
:
:
:
:
:
:
:
:

MDL Docket No. 1657

SECTION L

JUDGE FALLON

MAG. JUDGE KNOWLES

**PRE-TRIAL ORDER 35(A)
(Production of Records in the Vioxx Resolution Program
Pursuant to CAP 2008-1, “Required Representative Capacity
Documentation: Vioxx User Claimant”)**

Pursuant to the terms of the Master Settlement Agreement (“MSA”) executed on November 9, 2007, this Court presides over the Vioxx Settlement Program. To carry out its duty, the Court issues this Order supplementing Pre-Trial Order No. 35 entered on April 10, 2008, which is fully incorporated herein. Accordingly, this Order is issued pursuant to the Court’s express authority to direct and control the coordinated discovery in this litigation pursuant to 28 U.S.C. § 1407, Fed.R.Civ.P. 16, and Fed.R.Civ.P. 26(b), the Court’s express authority as set forth in the terms of the MSA, and the Court’s inherent authority regarding case-specific discovery in this MDL.

The Parties to the MSA and the Claims Administrator have developed a procedure, known as CAP 2008-1, to allow claims submitted to the Vioxx Resolution Program on behalf of Deceased Claimants to move forward in the settlement process without delay. The CAP 2008-1 procedure allows a Claimant or their counsel to complete a *Form V2031* to provide information on Surviving Spouse or the Designated Representative of a Deceased Claimant. The Surviving Spouse or

Designated Representative named in *Form V2031* is authorized to sign a Release or the Medical Authorization Form, allowing the Claim to be evaluated in the claims process. Copies of the various forms can be obtained at the BrownGreer website located at www.browngreer.com.

The PSC issued a *Subpoena* for prescription data including for certain Deceased Claimants, service of which was accepted by counsel for Express Scripts Inc. (ESI) on June 30, 2008. ESI has been provided a *Form V2031* and signed Medical Authorizations for certain Deceased Claimants. ESI has delayed production of the requested prescription data for Deceased Claimants because of concern as to the bona fides of the requesting party. Accordingly,

IT IS HEREBY ORDERED that ESI can rely upon the CAP 2008-1 procedure and shall, within 7 days of the entry of this Order, produce and forward any and all prescription data in its possession, custody or control for those Deceased Claimants it has received a *Form V2031* and a Medical Authorization directly to the Honorable Eldon E. Fallon, United States District Judge, Eastern District of Louisiana, 500 Poydras Street, Room C456, New Orleans, LA 70130. The production shall be labeled with the name of the individual whose records are being produced and a reference that the production is made pursuant to PTO 35(A), *In re: Vioxx Products Liability Litigation*, MDL 1657; and,

IT IS FURTHER ORDERED, consistent with Pre-Trial Order No. 35, that any entity (including but not limited to physicians, healthcare providers, pharmacies, Prescription Benefit Managers [including ESI], educational facilities, former and present employers, insurance providers, all branches of the military and or any other federal, state and/or local government agencies) that are provided with *Form V2031* and an Authorization as part of the Vioxx Resolution Program, can rely upon the CAP 2008-1 procedure and shall, within 7 days after receiving a *Form V2031* and an

Authorization, produce and forward any and all requested records or data directly to the Honorable Eldon E. Fallon, United States District Judge, Eastern District of Louisiana, 500 Poydras Street, Room C456, New Orleans, LA 70130. The production shall be labeled with the name of the individual whose records are being produced and a reference that the production is made pursuant to PTO 35(A), *In re: Vioxx Products Liability Litigation*, MDL 1657.

New Orleans, Louisiana, this 29th day of September, 2008

A handwritten signature in black ink that reads "Eldon E. Fallon". The signature is written in a cursive style with a horizontal line underneath the name.

ELDON E. FALLON
UNITED STATES DISTRICT JUDGE