

**SUPERIOR COURT
(Class Actions)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000966-198

DATE: October 25, 2019

BY THE HONOURABLE CHANTAL TREMBLAY, J.S.C.

KAREN BASAL

Applicant

v.

ALLERGAN PLC

and

ALLERGAN INC.

and

ALLERGAN USA INC.

and

MENTOR WORLDWIDE LLC

and

JOHNSON & JOHNSON INC.

Defendants

**JUDGMENT FOR THE ISSUANCE OF
A CONFIDENTIALITY AND SEALING ORDER**

[1] The Applicant request the issuance of a confidentiality and sealing order regarding exhibit P-16 filed in support of the *Application to authorize the bringing of the class action and to be appointed the status of representative (Application for authorization)*.

[2] The exhibit is described as follows:

Exhibit P-16: *En liasse*, copies of Applicant's medical and consultation records with respect to health care and treatment received from Dr. P. and Dr. H. (including follow-ups), as well as pharmaceutical patient file, all in relation to the surgery she underwent on September 15, 2016;

[3] The Court views the information contained in exhibit P-16 as confidential. Therefore, the Court is of the view that a sealing order must be issued.

WHEREFORE, THE COURT:

[4] **GRANTS** the application for the issuance of a sealing and confidentiality order;

[5] **ORDERS** that the Confidential Materials, as that term is defined below, be protected by a sealing and confidentiality order in the terms set out hereinafter:

- 5.1. The following documents (the "**Confidential Materials**") shall be sealed in the court file, kept confidential and not form part of the public record, and only made available to the Applicants' counsel, the Applicant Karen Basal, the Defendants and their counsel and the Court, pending further order of this Court:
 - a. Exhibit P-16 : *En liasse*, copies of Applicant's medical and consultation records with respect to health care and treatment received from Dr. P. and Dr. H. (including follow-ups), as well as pharmaceutical patient file, all in relation to the surgery she underwent on September 15, 2016;

Authorized Recipients

- 5.2. Only the following persons shall be authorized recipients ("**Authorized Recipients**") entitled to have access to the Confidential Materials, subject to the terms and conditions set out in this Order:
 - a. The external counsel retained by the parties in relation to this proceeding and students-at-law, paralegals and necessary secretarial and clerical personnel employed by the external counsel;
 - b. The parties to this proceeding;
 - c. The Defendants' in-house counsel or legal department;
 - d. Expert witnesses retained by the parties in relation to this proceeding;
 - e. Such other persons as from time to time the Court may name or the parties may jointly agree in writing to name as Authorized Recipients, subject to specified terms and conditions;

Authorized Recipients Shall Not Disclose the Confidential Material and the information contained therein

- 5.3. Except as expressly provided in this Order or agreed in writing by the party providing the confidential information, each of the Authorized Recipients shall maintain all Confidential Material, and the information contained therein in strict confidence and shall not:
 - a. Reveal, disclose or permit access to the Confidential Material and the information contained therein to any person, directly or indirectly, other than the Authorized Recipients, and only in accordance with the terms

- and conditions in this Order; or
- b. Reproduce, release, disclose or use the Confidential Material and the information contained therein in any manner for any purpose other than the purpose of this proceeding,
subject to an Order of this Court to the contrary.
- 5.4. Nothing in this Order shall prevent a party to this proceeding or its external counsel from making use of information which:
- a. Was, is or becomes public knowledge by means not in violation of the provisions of this Order or any other confidentiality provision or agreement; or
 - b. The party or its external counsel lawfully and without legal restriction obtained from a third person not a party to this proceeding who has a right to disclose such information.

Treatment of Transcripts as Confidential Information

Transcripts of any cross-examinations conducted in the course of this proceeding during which the Confidential Materials and the information contained therein are referred to will also constitute Confidential Materials. Any party that intends to file transcripts of cross-examinations with the Court in connection with this proceeding shall advise the other parties, through their respective counsel, of their intention to do so at least ten (10) days prior to such filing, to allow such other parties the opportunity to indicate what portions of such transcripts are Confidential Materials. The filing party may, upon delivery of the transcripts, advise the receiving parties whether they intend to seek a sealing order from this court in respect of any part or the entirety of such transcripts. The receiving parties shall, within ten (10) days thereafter, advise the other parties whether they intend to seek a sealing order from this court in respect of such transcripts.

Disposition of the Confidential Materials upon Termination of the Proceeding

- 5.5. Subject to further order of this Court, upon the final termination of this proceeding (including the expiry of all rights of appeal), the parties' counsel shall engage in all reasonable efforts to:
- a. Gather and destroy all the Confidential Materials and all copies thereof whether held by the party's counsel or the Authorized Recipients;
 - b. Destroy all originals and reproductions of other documents and things containing information whose source is the Confidential Materials; and
 - c. Destroy, delete, or permanently erase all the Confidential Materials in electronic or similar form,
within a period of 30 days (or such longer period as the parties may agree). The parties' counsel shall, in writing to the counsel of the party

that provided the Confidential Materials within the 30-day period, confirm that they used reasonable efforts to destroy, delete, or permanently erase the Confidential Materials. To the extent that a receiving party is subject to a regulatory or legal obligation to refrain from destroying or deleting certain documents in its possession, then the obligation of the receiving party to engage in all reasonable efforts to destroy, delete, or permanently erase the Confidential Materials is limited to engaging in all reasonable efforts that do not result in a violation of such regulatory or legal obligation.

- 5.6. For greater certainty, the obligation to gather and destroy the Confidential Materials set out in paragraph 6.5 above shall not apply to any Confidential Materials that were made part of the public record in the course of this proceeding.
- 5.7. The termination of these proceedings shall not relieve any person in possession of the Confidential Materials pursuant to this Order from the obligation of maintaining the confidentiality of such Confidential Materials, and the information contained therein, in accordance with the provisions of this Order and any Confidentiality Undertaking.

Implied, Deemed and Previously Executed Undertakings

- 5.8. This Order does not affect or derogate from any undertaking that may be implied at law or imposed by statute or regulation restricting the use that a person may make of evidence or information obtained in the course of this proceeding or any undertaking previously agreed upon and/or executed in connection with this matter.

Notice

- 5.9. In the event any of the Authorized Recipients receives a subpoena or receives notice that he or she is or may be required by law to disclose any of the Confidential Materials or the information contained therein, that person shall promptly provide counsel of record for the parties with advance written notice so that any one or more of the parties may seek a protective order or other appropriate remedy. In the event a party does not have counsel of record at the relevant time, the advance written notice for the purposes of this provision is to be given to the party.

Application for Further Directions

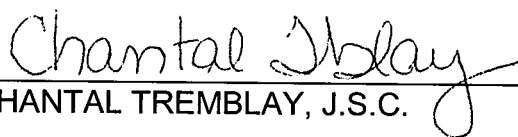
- 5.10. This Order is an initial order governing confidentiality and shall be subject to further direction of the Court. The parties to this proceeding or any parties establishing a legitimate interest in this matter may make an application to the Court, upon reasonable notice to all of the parties to this proceeding, to gain access to any of the Confidential Materials filed under seal, to vary or modify this Order, or to seek directions as to the meaning or application of this Order.

5.11. For greater certainty, nothing in this Order shall affect or derogate from the rights of the Defendants to seek to vary or modify this Order, or to seek a further order governing confidentiality.

No Determination regarding Admissibility

5.12. Nothing in this Order shall be construed to determine or affect in any way the admissibility of any document, testimony or other evidence in respect of this proceeding.

[6] **THE WHOLE**, without legal costs.


CHANTAL TREMBLAY, J.S.C.

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