

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: FRESENIUS GRANUFLO/NATURALYTE  
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

**TRANSFER ORDER**

**Before the Panel:** Plaintiffs in the action listed on Schedule A (*Pryor*) move under Panel Rule 7.1 to vacate our order that conditionally transferred *Pryor* to the District of Massachusetts for inclusion in MDL No. 2428. The responding defendants (collectively, Fresenius)<sup>1</sup> oppose the motion.

In their motion to vacate, plaintiffs principally argue that transfer should not take place unless and until their motion for remand to state court is decided. We have held repeatedly that a motion for remand alone is generally an insufficient basis to vacate a conditional transfer order.<sup>2</sup> Indeed, we have rejected similar arguments in support of motions to vacate conditional transfer orders in this litigation. *See, e.g.*, Transfer Order at 1, *In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, MDL No. 2428 (J.P.M.L. Feb. 5, 2015), ECF No. 1023. Plaintiffs can present their motion for remand to the transferee judge. *See, e.g.*, *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

Plaintiffs also argue that transfer is not warranted because *Pryor* involves medical malpractice claims against non-Fresenius defendants—specifically, providers of dialysis services. This argument is not persuasive. Like all the actions in MDL No. 2428, *Pryor* involves allegations that GranuFlo Acid Concentrate (GranuFlo) and NaturaLyte Liquid Acid Concentrate (NaturaLyte) were defective and that Fresenius failed to provide adequate warnings about the risks associated with these products. Other actions pending in the MDL involve similar claims against dialysis centers and medical providers. In any event, transfer under Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to transfer. *See In re National Sec. Agency Telecomms. Records Litig.*, 444 F. Supp. 2d 1332, 1334 (J.P.M.L. 2006).

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<sup>1</sup> The responding defendants include: Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America; Fresenius USA, Inc.; Fresenius USA Manufacturing, Inc.; and Fresenius USA Marketing, Inc.

<sup>2</sup> Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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After considering the argument of counsel, we find that *Pryor* involves common questions of fact with the actions previously transferred to MDL No. 2428, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the District of Massachusetts was an appropriate Section 1407 forum for actions sharing factual questions arising out of allegations that plaintiffs suffered injury or death caused by the use of GranuFlo or NaturaLyte during hemodialysis, which allegedly may cause metabolic alkalosis in patients resulting in low blood pressure, hypokalemia, hypoxemia, hypercapnia, cardiac arrhythmia, or cardiopulmonary arrest. See *In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, 935 F. Supp. 2d 1362 (J.P.M.L. 2013). *Pryor* involves similar allegations that plaintiffs or their decedents suffered metabolic alkalosis as a result of the use of GranuFlo and/or NaturaLyte during hemodialysis. This action likewise involves factual questions relating to whether these products were defectively designed or manufactured, whether Fresenius, the manufacturer of these dialysate products, knew or should have known of the alleged propensity of these products to cause injury, and whether it provided adequate instructions and warnings with these products.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable Douglas P. Woodlock for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Lewis A. Kaplan  
R. David Proctor

Charles R. Breyer  
Ellen Segal Huvelle  
Catherine D. Perry

**IN RE: FRESENIUS GRANUFLO/NATURALYTE  
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

**SCHEDULE A**

Eastern District of Missouri

PRYOR, ET AL. v. FRESENIUS MEDICAL CARE NORTH AMERICA, INC.,  
ET AL., C.A. No. 4:14-02075