

PATENTED MEDICINE PRICES REVIEW BOARD

**IN THE MATTER OF the Patent Act, R.S.C. 1985, c. P-4,
as amended**

**AND IN THE MATTER OF Alexion Pharmaceuticals Inc.
and the medicine "Soliris"**

REASONS FOR DECISION
(Motion to Issue Subpoenas)

Decided by the panel (the "**Panel**") of the Patented Medicine Prices Review Board (the "**PMPRB**" or the "**Board**") seized with this proceeding on the basis of the written record.

1. Board Staff brought a motion late Friday, January 20, 2017 asking the Panel to issue subpoenas requiring Mr. Eric Lun and Mr. John Haslam to produce certain documents related to Product Listing Agreements ("**PLAs**") negotiated between Alexion and various provincial drug plans concerning Soliris.
2. The BC Minister of Health consents to the issuance of the subpoena to Mr. Lun in respect of the documents in his possession, subject to having the opportunity to make submissions that the documents be redacted for confidentiality reasons before being placed on the public record.
3. Alexion objects to the issuance of the subpoenas on two main grounds. First, Alexion argues that the documents requested are irrelevant. Second, Alexion argues that Board Staff's request is abusive, ill-timed, and will cause unnecessary delay and costs.

4. In its Reply, Board Staff agreed with Alexion that "in the ordinary course information regarding the existence of PLA agreements should not be relevant" but noted that they are specifically referred to in the witness statement of Mr. Haslam. Board Staff offered to withdraw its motion in respect of Mr. Haslam if Alexion confirms that it is not relying on the PLAs or the amended Forms 2s that it filed claiming rebates based on the PLAs. Alexion has not provided that confirmation.

5. In making its decision, the Panel has fully considered the written representations of Board Staff and Alexion, the BC Minister's consent, and the oral submissions made by the Parties during the hearing on January 23, 2017.

6. The Panel does not accept Board Staff's assertion that its motion could not have been brought earlier and at a time that did not disrupt the conduct of this proceeding, which it has. Nevertheless, the Panel has jurisdiction under section 96(1) of the *Patent Act* and Rule 24 of the PMPRB *Rules of Practice and Procedure*¹ (the "**Rules**") to issue the requested subpoenas, and concludes that it should do so if the documents requested by Board Staff are relevant to the issues in this proceeding, and their production is consistent with the fair and expeditious conduct of this proceeding (see section 97(1) of the *Patent Act* and Rule 5(2) of the Rules).

7. The Panel concludes that the documents requested to be produced for inspection are relevant to the issues in the proceeding, and that their production furthers the fair and expeditious resolution of the proceeding. The PLAs are specifically discussed in the witness statements of both Mr. Lun and Mr. Haslam. Correspondence about the PLAs is included in Exhibit 1 and was discussed with Mr. Richard Lemay during his examination-in-chief. If the PLAs are going to be the subject of testimony, it is important that the Panel have an accurate and complete picture.

8. The Panel therefore grants Board Staff's motion, in part, as follows:

- i. A subpoena will issue today requiring Mr. Lun to produce for inspection the agreements referred to in paragraph 28 of his witness statement that are

¹ SOR/2012-247.

in the possession of the BC Minister of Health, as well as the correspondence relevant to the negotiations referred to in that same paragraph that are in possession of the BC Minister of Health, on or before January 27, 2017. In the circumstances, Mr. Lun's testimony will be adjourned to the week of February 20, 2017;

ii. A subpoena will issue today requiring Mr. Haslam to produce for inspection the agreements referred to in paragraphs 32 to 37 of Mr. Haslam's witness statement, as well as the correspondence relevant to the negotiations referred to in those same paragraphs, on or before January 31, 2017; and

iii. At the same time as the documents are produced, counsel, including counsel for the BC Minister of Health, shall make any confidentiality claims in respect of the documents in writing, and provide proposed redacted versions of the documents that can be placed on the public record without delay.

9. In order to ensure that this hearing continues as fairly and as expeditiously as possible, the Panel makes the following direction applicable to the remainder of this week:

i. Mr. Malcolm Ruby is to complete his cross-examination of Mr. Lemay, without prejudice to Mr. Ruby's ability to reserve any questions he may have for Mr. Lemay about the documents we have ordered be produced for inspection until after those documents have been received and reviewed. We note that by their very nature, most, if not all, of the documents are already in Alexion's possession. Mr Lemay will remain in cross-examination and may be recalled to answer those questions if Mr. Ruby so desires on a date set by agreement of counsel or, if counsel cannot agree, as directed by the Panel. Any reply questions of Mr. Lemay by Board Staff will also be reserved to that time;

- ii. As noted above, Mr. Lun's testimony will be adjourned to the week of February 20, 2017, to allow all parties the opportunity to review the documents that he produces for inspection prior to his examination taking place. Counsel shall work together to agree on a date for Mr. Lun's examination during that week; and
- iii. We will proceed with the evidence of both Dr. Richard Schwindt and Dr. Sumanth Addanki this week, after Mr. Ruby completes his cross-examination of Mr. Lemay on all matters he wishes to cross-examine on, excluding the documents we have ordered be produced for inspection.

Dated at Ottawa, this 24th day of January, 2017.

Original signed by

Signed on behalf of the Panel by
Dr. Mitchell Levine

Panel Members:

Dr. Mitchell Levine
Ms. Carolyn Kobernick