

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”**

**REPLY BY BOARD STAFF TO THE RESPONSE OF ALEXION
PHARMACEUTICALS INC. TO THE MOTION UNDER RULE 24 FOR
THE ISSUANCE OF A SUBPOENA *DUCES TECUM* TO ERIC LUN
AND JOHN HASLAM**

1. As a preliminary matter it should be noted that the Rule 24 Motion for the issuance of a subpoena which was made by Board Staff on January 20, 2017 was not intended to disrupt or halt the ongoing proceeding.
2. It was the intention of Board Staff that its motion for the issuance of a subpoena *duces tecum* against Mr. Lun would be dealt with subsequent to the conclusion of Mr. Lemay’s cross-examination and prior to the examination of Eric Lun (presently scheduled for January 27, 2017). The intention of Board Staff was that the request for the issuance of a subpoena *duces tecum* against Mr. Haslam would be dealt with prior to Mr. Haslam being called as a witness (presently scheduled for the week of February 20, 2017).
3. The Motion by Board Staff for the issuance of a subpoena was made in accordance with Rule 25(4) which provides that the date fixed for the hearing of a

motion must be not be earlier than two days after the service of the motion.¹ It is therefore inappropriate for counsel for Alexion Pharmaceuticals Inc. (“Alexion”) to insist that the Panel rule on the motion by Board Staff for the issuance of a subpoena against Mr. Lun and Mr. Haslam forthwith and prior to continuing with the cross-examination of Mr. Lemay. Similarly, it is inappropriate for Alexion to halt the proceeding to bring its own motion, which was not served in accordance with Rule 25(4) and then insist that the proceeding be held in abeyance until its motion has been dealt with.

4. It must also be noted that in the letter of January 20, 2017 from counsel for Board Staff enclosing this motion, we advised that we had spoken to Ms. Kraitberg who is counsel for the BC Minister of Health. Ms. Kraitberg advised that she consented to the issuance of the subpoena to Mr. Lun, subject to her having the ability to argue that some or all of the documents may need to be redacted for the purpose of the public record.² Accordingly Alexion has no standing to argue that a subpoena compelling Mr. Lun to provide the documents requested in the subpoena should not be issued.
5. Board Staff concedes that counsel for Alexion does have standing to argue whether the subpoena *duces tecum* should be issued to Mr. Haslam.

¹ This is in contrast to Alexion’s most recent motion which was served on Monday, January 23, 2017. That motion seeks to have the hearing held in abeyance.

² Ms. Kraitberg’s email of January 23, 2017 confirmed her agreement to have Mr. Lun produce the documents.

6. In paragraphs 3 to 7 of Alexion's Response to Board Staff's Motion for the issuance of a subpoena *duces tecum* (the "Response"), Alexion asserts that the information in the PLAs is not relevant to this proceeding. Board Staff agrees that in the ordinary course information regarding the existence of PLA agreements should not be relevant.
7. However, paragraphs 31 to 38 of Mr. Haslam's Witness Statement (attached as **Tab A**) specifically set out Alexion's evidence regarding the existence of the PLA agreements. Mr. Haslam specifically states that the total value of rebates paid by Alexion under the PLAs was approximately seven million dollars. Accordingly, Alexion has squarely put in issue the existence of PLA agreements.
8. On January 6, 2017 Alexion forwarded to Board Staff copies of new documents that it wanted to include in the Joint Book of Documents. Included in these documents were the six emails which are found at Tab 124 of the Joint Book of Documents (marked as Exhibit 1) regarding the negotiation of a PLA agreement for Soliris.
9. On January 20, 2017 we were advised by the BC Minister of Health that there are additional relevant documents regarding the existence of PLAs.
10. Board Staff is quite prepared to withdraw its request for the issuance of a subpoena *duces tecum* requiring Mr. Haslam to provide the documentation requested in our motion if Alexion agrees that they will not be relying on any evidence with respect to PLAs at the hearing and that Alexion confirm that it will

not be relying on the amended Form 2s filed in which Alexion claims rebates as a result of the PLAs.

11. What Alexion cannot do is rely on selective evidence with respect to the PLAs which it claims is relevant but then argue out of the opposite side of its mouth that it is irrelevant and that Board Staff cannot respond to the evidence.
12. The Motion by Board Staff for the issuance of a subpoena *duces tecum* seeks to ensure that if the Panel does hear evidence with respect to PLAs, that all of the relevant evidence be provided.
13. Board Staff's motion seeks documentation regarding the PLAs that Alexion and the Ministers of Health are parties to and that Board Staff (including Mr. Lemay) has not seen and has no knowledge of. Consequently, it is manifestly evident that Mr. Lemay will not be able to provide any factual testimony with respect to that documentation. As a fact witness, it also goes without saying that Mr. Lemay will not be able comment on or provide any opinions with regard to the PLA documentation either. Accordingly, there is no basis for halting the completion of the cross-examination of Mr. Lemay pending the determination of Board Staff's motion for the subpoena *duces tecum*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of January, 2017

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TAB A