RAREi
THE CANADIAN FORUM FOR RARE DISEASE INNOVATORS

Proposed Amendment to the PMPRB's Price Review Guidance during the Interim Period following publication of July 2022 Amendments to the *Patented Medicines Regulations*
August 2023

1. Introduction

On behalf of the Canadian Forum for Rare Disease Innovators (RAREi), thank you for the opportunity to provide feedback on the Patented Medicine Prices Review Board's (PMPRB's or the board's) proposed amendments to its interim guidance addressing price reviews of patented medicines during the period between the coming into force of the new *Patented Medicines Regulations* and the final publication of new PMPRB guidelines.

RAREi understands the rationale for the proposed changes and supports the PMPRB's efforts to take pragmatic steps to limit the impact of an extended interim time frame on future resource allocation. In general, RAREi is comfortable with the conceptual approach proposed to address that challenge. However, some slight alterations regarding how it is operationalized may have the double benefit of reducing uncertainty for patentees and further reducing the burden on PMPRB review staff.

In addition, RAREi would like to take this opportunity to provide a few general observations that could assist the board as it considers new guidelines.

RAREi would also like to acknowledge the board's efforts to provide stakeholders with adequate time to consider the proposed amendments and formulate a thoughtful response. A 60-day consultation period is a refreshing change from some of the rapid turnarounds demanded during previous consultations.

2. Feedback on the proposed changes

As indicated above, RAREi supports the notion of trying to limit the number of medicines that would be subject to subsequent review by PMPRB staff when the new guidelines are finalized. While the proposal would limit that number somewhat, a more pragmatic approach would reduce the number of potential reviews further as follows:

a. **Take a true "status quo" approach and only apply new rules on a go-forward basis:** RAREi recommends that the board apply the new basket of comparator countries prospectively only. That would mean that prices of medicines marketed before July 1, 2022 which were compliant with the previous guidelines and regulatory regime and which have not been increased beyond the allowable consumer price index (CPI)-adjustment factors should not be reconsidered when the new guidelines are in place. This approach would avoid significant operational challenges for patentees and payers and limit the potential for future supply disruptions.

b. **Revise the proposed excessive price standard:** In light of recent legal decisions that clarified that the PMPRB's role is not to control or regulate prices, but rather should be limited to guarding against abuses of patent rights through excessive pricing practice, the board should not require new medicines to be priced at or below the median international price (MIP) among the PMPRB11 comparator countries. Given that it would be a stretch to consider median prices "excessive" based on a reasonable definition of that term, the

board's interim excessive price standard should be defined as lower than the highest international price (HIP) among the PMPRB11. As the consultation discussion document notes, 55% of "new" medicines already have public list prices below median of the PMPRB11, exceeding the PMPRB's own departmental plans and priorities performance indicator for 2023-24.[1] In this context, RAREi recommends that new medicines (i.e., those that had no maximum average potential price or non-excessive average price as of July 1, 2022) should not be subject to subsequent review if they are priced below the highest international price (HIP) among the PMPRB11. This would reduce the number of potential price reviews following the interim period substantially.

c. **Extend allowable inflationary increases beyond 2022**: Given the inclusion of the consumer price index as a factor in the *Patent Act*, the PMPRB's longstanding practice has been to allow price increases based on a three-year rolling average of changes in the consumer price index (CPI). RAREi requests that the board clarify that price increases taken during the interim period that reflect the PMPRB's standard CPI-adjustment factors would be allowed and deemed compliant and considered reviewed.

3. Feedback Regarding the Development of Permanent Guidelines for Consideration

As noted above, RAREi would like to offer some thoughts regarding how to approach the development of permanent guidelines for patentees.

As a starting point, it must be stressed that there is evidence demonstrating that price limitations are a disincentive to launch new medicines and to invest in research and development. A Canadian academic review determined that that a 25% decrease in list prices in given country would lead to a 6-10% and 4.5-6% decrease in the number of new medicines launched during a 1- and 7-8-year period, respectively.[2] Recent experience in Canada indicates that may be true. According to an IQVIA review, fewer than 60% of the products introduced in the US since 2017 had launched in Canada by the end of 2021. In the five years prior to 2017, Canada launched more than 80% of the products marketed in the US. In addition, Canadian launches occurred after a median delay following the first global launch of 2.1 years since 2012, ranking it ninth out of the top-23 launch countries. Prior to 2017, Canada ranked either fourth or fifth globally.

Assuming that the federal government wants to ensure that Canada remains competitive with its international counterparts on key innovation and health system goals, the following suggested considerations should be kept in mind:

a. **Rely on research, active dialogue and case studies to help inform new price review approaches before proposing them formally:** In keeping with the board's promise to undertake comprehensive consultations before the final guidelines are prepared, RAREi asks for assurances that the PMPRB's proposed new guidelines and regulatory approaches will be informed by research, active dialogue with patentees and case studies. The consultations need to go beyond written input and include opportunities to work through case studies or facilitate regulatory sandboxes to address operational concerns before the guidelines are finalized. It is only through direct dialogue and collaboration with the innovators that will be affected that

[1] PMPRB, 2023-24 Departmental Plan, March 9, 2023; https://www.canada.ca/en/patented-medicine-prices-review/corporate/transparency/departmental-plan/2023-24-departmental-plan.html.

[2] Grootendorst P & Spicer O, *The effect of patented drug price on the share of new medicines across OECD countries*, Health Policy, Volume 126, Issue 8, August 2022, pp. 795-801: https://www.sciencedirect.com/science/article/pii/S0168851022001154.

potential uncertainty can be addressed most effectively. This is especially important for rare disease innovators given the unique challenges of developing and launching treatments for small patient populations. In light of that understanding, RAREi has supported case studies to assess how rare disease medicine prices would be affected by PMPRB-proposed price review approaches throughout the previous guidelines proposal consultations and it is interested in continuing to play that role in collaboration with the PMPRB in the coming months as new guidelines are developed.[3,4,5]

b. **Future guidelines should not be a barrier to early access mechanisms that are under development in Canada:** Of late, the Canadian Agency for Drugs and Technologies in Health (CADTH) and the pan-Canadian Pharmaceutical Alliance (pCPA) have been working toward the development of early access mechanisms that would allow eligible products that meet a unmet need to be reimbursed publicly on a temporary basis while additional evidence is developed to respond to evidentiary uncertainties identified during the existing reimbursement review process. These proposals contemplate the potential for price changes after the new evidence is in and reassessments and new product negotiations have been conducted. Any guidelines developed by the PMPRB should be developed with these emerging early access approaches in mind and constructed in such a way as not to discourage participation by innovators in these initiatives based on the potential for jeopardy at the PMPRB price review level when the reassessments are complete and a new price is negotiated.

c. **Align with relevant federal and provincial strategies and policy priorities:** In recent years, the federal government has introduced two important new national strategies that reflect its policy intention to support a robust and vibrant life sciences ecosystem and extend faster and more equitable access to rare disease treatments. Similar initiatives have been launched at the provincial level. In addition, the federal government has made a commitment to regulatory modernization and reducing unnecessary burden on Canadian businesses. The federal Biomanufacturing and Life Sciences Strategy outlines five strategic pillars which highlight, among other things, enabling innovation by ensuring world class regulation. Regarding the pan-Canadian Rare Disease Drug Strategy, the government has made a multi-year commitment to invest in improving patient access to orphan medicines. As RAREi, has stated in past, the board's previously proposed reforms would have imposed severe and negative effects on rare disease patients particularly. The PMPRB's ongoing focus on rare diseases as an area it has determined is at particular risk for excessive pricing is at odds with the strategies of other jurisdictions that provide specific incentives for developing and commercializing medicines for small patient populations. Finally, the government-wide regulatory modernization effort is directed at addressing "overly complicated, inconsistent or outdated federal requirements. The PMPRB should ensure that its new guidelines reflect the policy intent behind these federal initiatives and their counterparts at the provincial level.

d. **Customized review processes that recognize the uniqueness of rare disease:** It is generally understood that developing treatments for rare disorders is a risky and costly enterprise. As a result, rare disease treatments tend to be priced higher than medicines for common diseases. However, that price difference generally can be explained in large part by the fact that research and development investments for rare disease treatments have to be recouped from a smaller market worldwide. That said, while rare disease treatments

[3] https://www.canadianhealthpolicy.com/product/new-patented-medicine-regulations-in-canada-case-study-of-a-manufacturer-s-decision-making-2/.
[4] https://www.canadianhealthpolicy.com/product/new-patented-medicine-regulations-in-canada-updated-case-study-en-fr-2/.
[5] https://www.canadianhealthpolicy.com/product/effect-of-amended-patented-medicine-regulations-on-industry-decisions-to-launch-new-drugs-in-canada/.

generally result in higher per-patient costs, their overall budget impact is comparatively low given their small patient populations. Thus far, the price review reforms proposed by the PMPRB would have imposed a disproportionate effect on rare disease treatments and if implemented, would have made it very challenging for innovators to bring rare disease medicines to the Canadian market, further slowing down or limiting patient access to those treatments. For example, in the context of the reliance on prices within the PMPRB11, challenges will arise when the United States is the only place where a comparison is available for a given rare disease medicine. This raises real questions about how innovators will be able to determine a compliant price before launching in Canada. All this suggests a need to customize the price review process in a way that reflects the unique characteristics of rare disease treatments and applies creative and flexible approaches to ensure Canada remains a competitive market.

e. **Take a more neutral and nuanced approach to orphan medication price and cost analysis:** RAREi has been concerned for several years with how the PMPRB staff have characterized orphan treatments as "expensive drugs for rare diseases" or EDRDs. In that context, the board has published several spending analyses and posters that indicate that EDRDs are "the fastest growing" pharmaceutical market segment, that they "threaten the sustainability" of Canadian drug plans, and they, as a class, are "not cost-effective." As a starting point, it must be stressed that characterizing of rare disease treatments as EDRDs is misleading, pejorative and reflects a lack of appreciation for the important impact that such medicines have on patient lives. It also suggests a cost-containment focus rather than a patient-oriented approach to the board's analysis. PMPRB should make a reasonable effort to use more precision and clarity of language and should refer to cost (not price) of medications in appropriate contexts when addressing those that may have relatively large budget impact. RAREi has partnered with Eversana to conduct independent research that tells a very different story and explains how the PMPRB's analytical methodologies are flawed (primarily by including the costs associated with non-rare indications as part of its reporting, which significantly inflates the impact of rare disease products on overall spending).[6,7] Without getting too far into the details, the point here is that the board's approach to analyzing orphan treatments is reflective of an attitude that must change if it wishes to play the role of an objective and neutral regulator. To clarify RAREi remains committed to continuing to help governments forecast the opportunity to invest in rare disease therapies in light of the current robust pipeline for new orphan treatments and would be pleased to enter into a dialogue with the board and staff to address these concerns with the goal of developing a more nuanced approach to assessing the cost and impact of rare disease treatments on the Canadian pharmaceutical market.

4. Concluding remarks

RAREi appreciates the opportunity to provide its feedback related to the board's proposed amendments to the interim price review process guidance and offer a few thoughts regarding the development of the permanent guidelines. It looks forward to additional dialogue that will assist the board in meeting its price review mandate while simultaneously encouraging a vibrant and productive innovative pharmaceutical sector in Canada.

To be clear, the lengthy federal pharmaceutical price review reform process has been a major challenge for patentees here in Canada and at the global level for several years now. RAREi's hope is that the PMPRB is well

[6] Forte L et al, *The current and future cost of orphan drugs in Canada*, Poster at ISPOR Europe 2019, Copenhagen, Denmark, November 2019. https://www.ispor.org/heor-resources/presentations-database/presentation/euro2019-3122/96632.

[7] Lech et al., *Historical and projected public spending on drugs for rare diseases in Canada between 2010 and 2025,* Orphanet Journal of Rare Diseases October 8, 2022: https://doi.org/10.1186/s13023-022-02534-z.

positioned under new leadership for continued constructive dialogue between the board and patentees, both in the context of discussions regarding specific products as well as the upcoming guidelines consultations.