



Box L40  
Standard Life Centre  
333 Laurier Avenue West  
Suite 1200  
Ottawa, Ontario  
K1P 1C1

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

**AND IN THE MATTER of HORIZON PHARMA (the "Respondent") and the medicine  
Cysteamine Bitartrate sold by the Respondent under the trade name Procysbi**

**DECISION WITH REASONS TO FOLLOW**

*(Motion to Bifurcate, Strike Evidence and for the Production  
and Inspection of Documents (the "Motion"))*

Decided by the panel (the "**Panel**") of the Patented Medicine Prices Review Board seized with this proceeding on the basis of written and oral submissions.

1. The Panel has reviewed and considered the materials filed and the oral submissions made by Board Staff and the Respondent in respect of the Motion. This is the Panel's decision on the Motion, with reasons for the decision to follow.
2. Board Staff's motion to bifurcate this proceeding is denied.
3. Board Staff's motion to redact those portions of the report of Professor Joel Hay that relate to the cost of making and marketing Procysbi is denied.
4. Board Staff's motion for an order permitting Secretariat International to inspect the books and records of the Respondent is denied, without prejudice to Board Staff's ability to renew its request for an inspection after its review of the documents referred to in paragraph 5(a) below. Any renewed request for an inspection should include detailed reasons as to why an inspection is necessary and appropriate in the circumstances.

5. Board Staff's motion for production of documents requested by Secretariat International as set out in Exhibit "B" of the Affidavit of Howard Rosen sworn November 28<sup>th</sup>, 2019 is granted in part. In this regard, the Panel makes the following orders:

- (a) The Respondent shall produce all requested documents that Andrew Harrington identified as "reasonable" in Exhibit "C" to his Affidavit sworn January 10, 2020 (the "**Harrington Affidavit**") as soon as possible.
- (b) Howard Rosen and Andrew Harrington shall meet and confer as soon as possible to endeavour to come to an agreement on the remaining document requests that were not identified as "reasonable" in Exhibit "C" to the Harrington Affidavit. The meet and confer shall take place in the presence of counsel for the Parties, unless the Parties agree otherwise. The Panel trusts that the Parties will make best efforts to ensure that the meet and confer is as productive as possible. Following the meet and confer, Mr. Rosen and Mr. Harrington shall prepare, and the Parties shall file with the Panel, a joint memorandum that identifies the requests that have been resolved and the requests that remain in dispute, if any.
- (c) If any of the document requests remain in dispute following the meet and confer session, a one day hearing shall be scheduled, with Mr. Harrington and Mr. Rosen in attendance, so that they are available to answer any questions that the Panel may have. The Panel will also receive brief submissions from counsel in respect of the remaining document requests in dispute. The Panel is available to hold this hearing on one of the following dates:
  - (i) March 16, 2020;
  - (ii) March 17, 2020;
  - (iii) March 18, 2020;
  - (iv) March 19, 2020;
  - (v) March 23, 2020;
  - (vi) March 24, 2020; or
  - (vii) March 25, 2020.

The Parties shall confer and advise the Board Secretary by February 1, 2020 which of the above dates are preferred for the one day hearing, should it be necessary. The Parties shall also hold February 25, 2020 at 2:00 p.m. for a pre-hearing telephone case conference.

Dated at Ottawa, this 17<sup>th</sup> day of January, 2020.

Original signed by Carolyn Kobernick

---

Signed on behalf of the Panel by  
Carolyn Kobernick

**PANEL MEMBERS:**

Carolyn Kobernick  
Mitchell Levine

**COUNSEL / REPRESENTATIVES:**

For Board Staff:

David Migicovsky  
Christopher Morris  
Courtney March

For the Respondent:

Sheila R. Block  
Andrew M. Shaughnessy  
Rachael Saab  
Stacey Reisman