



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 Procsbi**

**DECISION ON CONFIDENTIALITY REQUESTS MADE BY THE RESPONDENT IN
RESPECT OF CERTAIN EXPERT REPORTS**

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

1. The Panel has carefully reviewed and considered the request for confidentiality filed by the Respondent on November 9, 2020 (the “**Confidentiality Request**”), and Board Staff’s reply to the Confidentiality Request filed on November 16, 2020 (the “**Reply**”).
2. The Confidentiality Request and the Reply were made pursuant to the confidentiality protocol issued by this Panel on October 29, 2019 (the “**Confidentiality Protocol**”).
3. The Confidentiality Request concerned the following expert reports filed by the Parties:
 - (a) Addendum to Expert Report of Dr. Joel Hay dated July 30, 2020;
 - (b) Responding Expert Report of Dr. Joel Hay dated October 5, 2020;
 - (c) Expert Report of Howard Rosen dated October 6, 2020;
 - (d) Reply Expert Report of Dr. Joel Hay dated November 3, 2020; and

- (e) Reply Expert Report of Howard Rosen dated November 3, 2020 (collectively, the “**Relevant Reports**”).

4. The Respondent’s Confidentiality Request proposed certain redactions to the version of the Relevant Reports that will be filed on the public record.

5. In support of its Confidentiality Request, the Respondent filed a redaction chart that listed each requested redaction and provided reasons for why each redaction should be permitted in accordance with the Confidentiality Protocol (the “**Redaction Chart**”). Within the Redaction Chart, the Respondent used yellow highlighting to identify the specific portions of each paragraph of the Relevant Reports that it proposed to redact.

6. In its Reply, Board Staff indicated that it agreed with the Respondent’s Confidentiality Request as Board Staff believed it was consistent with this Panel’s *Decision on Confidentiality Requests Made in Respect of Materials Filed for Board Staff’s Bifurcation/Production Motion* dated February 24, 2020 (the “**Initial Confidentiality Decision**”).¹

7. After fully considering the materials filed by the Respondent and Board Staff, the Panel grants the Respondent’s Confidentiality Request in part, as follows:

- (a) The Panel denies request numbers 27, 131 and 133 of the Redaction Chart in their entirety;
- (b) The Panel grants request numbers 1-10, 12-26, 28-31, 33, 35-43, 44-59, 61-62, 64-68, 71-75, 77, 79, 83-86, 88-113, 115-122, 124-130, 134, 136-146, 148-165, 167-175, 177-182 and 185 of the Redaction Chart in their entirety; and

¹ Board Decision – *Horizon Pharma and the medicine Cysteamine Bitartrate* (February 24, 2020), online: <<https://www.canada.ca/en/patented-medicine-prices-review/services/hearings/status-ongoing-proceedings/decision-confidentiality-requests.html>>.

- (c) The Panel grants request numbers 11, 32, 34, 60, 63, 69-70, 76, 78, 80-82, 87, 114, 123, 132, 135, 147, 166, 176, 183-184, of the Redaction Chart in part.

8. The Panel has provided a copy of the Redaction Chart to the Parties with this Decision and has underlined in red the portions of the Respondent's requested redactions that it accepts are confidential and should be redacted from the public record.

9. For greater clarity, the Panel only permits the redaction of the portions of the Relevant Reports that are underlined in red in the Redaction Chart. Where there is yellow highlighting, but no red underlining, the Panel denies the request and that portion of the Relevant Report shall not be redacted from the version filed on the public record.

10. The Panel repeats and relies on the legal principles and findings set out in its Initial Confidentiality Decision, and in its *Decision on Confidentiality Request Made in Respect of Materials filed for the Production of Documents* dated July 21, 2020 (the "**July Confidentiality Decision**"),² which are incorporated by reference into this Decision. The Panel granted the requests or portions of the requests noted in paragraphs 7(b) and (c) above because they were consistent with the Initial Confidentiality Decision, July Confidentiality Decision and/or were justified based on the test for confidentiality set out in the Confidentiality Protocol.

11. The Panel denies the redaction requests set out in paragraph 7(a), and grants the redaction requests set out in paragraph 7(c) in part only, for one or more of the following reasons:

- (a) The information is already in the public domain and therefore is not confidential pursuant to paragraph 12 of the Confidentiality Protocol. For example, redaction request number 133 proposes to redact an excerpt of

² Board Decision – *Horizon Pharma and the medicine Cysteamine Bitartrate* (July 21, 2020), online: <<https://www.canada.ca/en/patented-medicine-prices-review/services/hearings/status-ongoing-proceedings/procysbi-decision-production-documents.html>>.

Horizon's Annual Report for 2016. However, this document is already in the public domain, and therefore this extract is not confidential.

- (b) The requested redaction is over-inclusive and inconsistent with the Panel's Initial Confidentiality Decision and/or the Panel's July Confidentiality Decision. For example, in these Decisions, the Panel indicated that the Parties must propose thoughtful, justified and precise redactions. However, in a number of instances in the Redaction Chart, the Respondent proposes to redact full paragraphs of an expert report, when the only confidential information contained in that paragraph is a precise dollar value or percentage. In those cases, only the precise dollar values or percentages are justified in being redacted.
- (c) The Respondent's justification for the request is generic in nature, and the Respondent has not satisfied the Panel that specific, direct and substantial harm will be caused by publicly disclosing the information. For example, with respect to redaction request number 27, no justification is provided for why Horizon's corporate chart is confidential. Similarly with respect to redaction request number 166, no justification is provided for why the generic description of a return on investment analysis is confidential. Accordingly, the requests to redact this information are denied.
- (d) The requested redaction is over-inclusive and inconsistent with other requests contained in the Redaction Chart. For example, request numbers 28 and 60 contain virtually identical information, however, in request number 28 the Respondent proposes to redact only certain percentages, whereas in request number 60 the Respondent proposes to redact the full sentence surrounding those same percentages. Accordingly, request number 60 is granted in part to ensure that the redactions are consistent. Similarly, request number 131 proposes to redact from Dr. Hay's reply expert report certain quotes from Mr. Rosen's expert report. However, no redaction request is made in respect of the relevant portions of Mr.

Rosen's expert report. Accordingly, redaction request number 131 is denied.

DISPOSITION

12. For the foregoing reasons, the Panel hereby orders the Parties to file with the Board public versions of the Relevant Reports by December 11, 2020, redacting only the portions of each of the Relevant Reports that the Panel has underlined in red in the Redaction Chart.

Dated at Ottawa, this 2nd day of December, 2020.

E-SIGNED by Carolyn Kobernick
on 2020-12-02 07:52:41 EST

Signed on behalf of the Panel by
Carolyn Kobernick

Panel Members

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