



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 REQUEST MADE IN RESPECT OF MATERIALS
FILED FOR BOARD STAFF’S MOTION FOR PRODUCTION OF DOCUMENTS**

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 April 22, 2020 (the “**Confidentiality Request**”) and Board Staff’s reply to the Confidentiality Request filed on April 29, 2020 (the “**Reply**”).
2. The Confidentiality Request and 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 materials filed in respect of Board Staff’s motion for production of documents:
 - (a) Joint Memorandum of Howard Rosen and Andrew Harington dated April 3, 2020 (the “**Joint Memorandum**”);
 - (b) Exhibit “A” to the Joint Memorandum;
 - (c) Written Submissions of the Respondent dated April 15, 2020; and
 - (d) Written Submissions of Board Staff dated April 15, 2020 (collectively, the “**Relevant Documents**”).

4. The Respondent's Confidentiality Request proposed certain redactions to the version of the Relevant Documents that will be filed in 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 Documents that it proposed to redact.
6. In its Reply, Board Staff objected to certain redactions proposed by the Respondent on the basis that: (i) specific, direct and substantial harm will not be caused by the public disclosure of the information; and (ii) the proposed redactions were inconsistent with the Panel's recent *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 number 1 of the Redaction Chart in its entirety.
 - (b) The Panel grants request numbers 2-7, 9-16, 18-22 and 24 of the Redaction Chart in their entirety.
 - (c) The Panel grants request numbers 8, 17 and 23 of the Redaction Chart in part.

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>>.

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 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 Documents 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 Document shall not be redacted from the version filed in the public record.

10. The Panel repeats and relies on the legal principles and findings set out in its Initial Confidentiality Decision, 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 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 the following reasons:

- (a) **Request number 1:** The Panel agrees with Board Staff's submission that the Respondent's justification for this request is generic in nature. The Respondent has not satisfied the Panel that specific, direct and substantial harm will be caused by publicly disclosing the date of a change in accounting policy.
- (b) **Request number 8:** The requested redaction is over-inclusive and inconsistent with the Panel's Initial Confidentiality Decision, in which the Panel denied the Respondent's request to redact the phrase: "discount of".²

² See for example, Sur-Reply Affidavit of Andrew Harington sworn January 10, 2020, B(5).

- (c) **Request number 17:** The requested redaction is over-inclusive and inconsistent with the Respondent's initial requests for confidentiality dated December 6, 2019, December 20, 2019 and January 17, 2020 (the "**Initial Confidentiality Requests**"). A virtually identical phrase is contained in paragraph 10 of the Sur-Reply Affidavit of Andrew Harington sworn January 10, 2020. The Respondent did not request to redact this phrase in its Initial Confidentiality Request. As a result, this phrase now forms a part of the public record and cannot be redacted in accordance with the Confidentiality Protocol.
- (d) **Request number 23:** The requested redaction is inconsistent with the Respondent's Initial Confidentiality Requests. The Respondent did not request to redact Professor Hay's mandate in its Initial Confidentiality Requests. As a result, this information now forms a part of the public record and cannot be redacted in accordance with the Confidentiality Protocol.³

DISPOSITION

12. For the foregoing reasons, the Panel hereby orders the Respondent to provide to the Secretary of the Board with public versions of the Relevant Documents by July 31, 2020, redacting only the portions of each of the Relevant Documents that the Panel has underlined in red in the Redaction Chart.

Dated at Ottawa, this 21st day of July, 2020.

Signed on behalf of the Panel by
Carolyn Kobernick

³ See for example, Expert Report of Dr. Joel Hay dated September 9, 2019, at para. 17(c).

Panel Members

Carolyn Kobernick
Mitchell Levine

Counsel for Board Staff

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