

STATE OF WISCONSIN,

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Case No.: 04 CV 1709

Plaintiff,

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v.

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ABBOTT LABORATORIES, ET AL.,

)

Defendants.

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**RESPONSES AND OBJECTIONS BY SMITHKLINE BEECHAM  
CORPORATION, D/B/A GLAXOSMITHKLINE (“GSK”) TO PLAINTIFF’S  
FIFTH SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant SmithKline Beecham Corporation, d/b/a GlaxoSmithKline (“GSK”), by its attorneys, hereby asserts the following responses and objections (“Responses” and “Objections”) to Plaintiff State of Wisconsin’s (“Plaintiff’s” or the “State’s”) Fifth Set of Requests for Production of Documents to All Defendants (“Requests”) as follows:

**PRELIMINARY STATEMENT**

1. By responding to these Requests, GSK does not waive or intend to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced in response; (b) the right to object on any ground to the use of the documents or information produced in response at any hearing, trial, or other point during the litigation; or (c) the right to object on any ground at any time to a demand for further responses to the Requests.

2. By responding to a particular Request, GSK does not assert that it has responsive documents or information or that such documents or information exist, only that it will conduct a reasonable inquiry if such documents or information are not known and provide the documents or information if they are responsive, non-objectionable and non-privileged. No objection made herein, or lack thereof, is an admission by GSK as to the existence or non-existence of any document or information.

3. The Responses made herein are based on GSK's investigation to date of those sources within its control where it reasonably believes responsive documents or information may exist. GSK reserves the right to amend or supplement these Responses in accordance with applicable law and Court orders in this action.

4. GSK reserves the right to modify these Objections and Responses and to present in any proceeding and at trial any further documents and information obtained during discovery and preparation for trial.

### **GENERAL OBJECTIONS**

GSK expressly incorporates all of the general objections set forth below into each Response to the Requests. Any specific objections provided below are made in addition to these general objections and failure to reiterate a general objection below does not constitute a waiver of that or any other objection.

GSK objects generally as follows:

1. GSK objects to Plaintiff's "Definitions" and "Instructions" to the extent that they expand upon or alter GSK's obligations under applicable law and court rules. GSK will comply with the applicable law and rules in providing its Responses and Objections.

2. GSK objects to each and every Request to the extent that it is irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that it purports to require production of documents or information relating to pharmaceuticals not properly placed at issue in this litigation.

3. GSK objects to each and every Request to the extent that it seeks documents or information protected by the attorney-client privilege, work-product doctrine, critical self-analysis privilege and/or self-evaluative privilege, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections, and to the extent these Requests seek trial preparation and expert materials. GSK hereby asserts these privileges to their fullest extent and no statement or answer herein shall constitute waiver thereof. Any document or information subject to any such privilege that is inadvertently produced by GSK shall not constitute or be deemed a waiver of such privilege or protection, and GSK reserves its rights to demand the return of any inadvertently produced document or information.

4. GSK objects to each and every Request to the extent that it seeks documents or information protected by the rights of free speech and/or association under the First Amendment to the U.S. Constitution, any provisions of the Wisconsin constitution, or any applicable constitution, statute or law of any jurisdiction protecting such rights.

5. GSK objects to each and every Request to the extent that it seeks documents or information that which were compiled for and presented during compromise negotiations, including the court-ordered mediation in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.). GSK hereby asserts these privileges and protections to their fullest extent and no statement or answer herein shall constitute waiver thereof. Any document or information subject to any such privileges and protections that is

inadvertently or otherwise produced by GSK shall not constitute or be deemed a waiver of such privileges or protections, and GSK reserves its rights to demand the return of any inadvertently produced document or information.

6. GSK objects to each and every Request to the extent that it seeks documents or information concerning a trade secret, proprietary or other confidential information, and are not otherwise subject to a protective order entered by the Court in this litigation.

7. GSK objects to each and every Request to the extent that it seeks documents or information that GSK received from third parties and cannot produce or disclose without prior approval of the third-parties.

8. GSK objects to each and every Request to the extent that it seeks documents or information that do not currently exist at GSK.

9. GSK objects to each and every Request to the extent that it purports to require GSK to create, compile, or develop documents or information not already in existence.

10. GSK objects to each and every Request to the extent that it seeks production of documents or information not in GSK's custody or control, publicly available documents or information, documents or information equally available to the Plaintiff, or documents or information more appropriately sought from third-parties to whom subpoenas or requests could have been directed.

11. GSK objects to each and every Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent that they purport to require production of documents or seek information relating to a period of time prior to June 3, 1998 (which is outside of any applicable statute of limitations) and/or after September

6, 2002 (the date on which Plaintiffs filed the Master Consolidated Class Action Complaint in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.)).

12. GSK objects to each and every Request as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence to the extent it seeks documents or information concerning Kytril® after December 22, 2000, the date on which GSK's predecessor, SmithKline Beecham, sold Kytril® to Hoffman-La Roche Inc.

13. GSK objects to each and every Response to the extent that it seeks documents or information that are not relevant to this litigation or are not reasonably calculated to lead to the discovery of admissible evidence.

14. GSK objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests. Any Response by GSK is not intended to indicate that GSK agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests, or that such implications or characterizations are relevant to this action.

15. Subject to and without waiving any objection set forth herein, GSK will produce non-privileged, responsive documents as set forth below at a time and place and in a manner to be agreed upon by the parties.

16. GSK objects to the definition of "you," "your" and "your company" as set forth in Definition No. 1 on the grounds that it is vague, ambiguous and overbroad.

17. GSK objects to the definition of "Document" as set forth in Definition No. 2 on the grounds that it is vague, ambiguous and overbroad and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. GSK further objects to this definition to the extent that its purports to require GSK to identify or

produce documents or data in a particular form or format, to convert documents or data into a particular file format, to produce documents or data on any particular media, to search for and/or produce or identify documents or data on back-up tapes, to produce any proprietary software, data, programs or databases, to violate any licensing agreement or copyright laws, or to produce data, fields, records, or reports about produced documents or data. The production of any documents or data or the provision of other information by GSK as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

### **RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION**

**REQUEST NO. 14:** All documents relating to lobbying efforts of you, or any individual or entity acting on your behalf (including but not limited to third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America), with regard to:

- (a) the Wisconsin Medicaid program's reimbursement for prescription drugs;
- (b) other state Medicaid programs' reimbursement for prescription drugs; and
- (c) the federal Medicare program's reimbursement for prescription drugs.

Documents sought by this request include, but are not limited to:

- (a) communications with the State of Wisconsin, the Wisconsin Department of Health & Family Services, and the Wisconsin legislature (including any legislative committee or individual state legislator);
- (b) communications with other states, other state Medicaid programs, and other state legislatures (including any legislative committee or individual state legislator);
- (c) internal communications within your company;
- (d) communications between you and external third-party lobbyists or lobbyist organizations such as the Pharmaceutical Research and Manufacturers of America; and
- (e) documents identifying, describing, or relating to the amount of money spent on lobbying efforts regarding these issues.

18. **RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence, including in particular with respect to the requests for documents not related to the Wisconsin Medicaid program. GSK

further objects on the ground that the following phrases are vague, ambiguous, and undefined: “lobbying efforts,” “third-party lobbyists,” “lobbyist organizations,” and “external third-party lobbyists.” GSK also objects to this Request to the extent that it seeks documents or information protected by the rights of free speech and/or association under the First Amendment to the U.S. Constitution, any provisions of the Wisconsin constitution, or any applicable constitution, statute or law of any jurisdiction protecting such rights. GSK further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege, the work-product doctrine, privileges relating to the right to lobby, the joint defense privilege, and/or any other applicable privilege or protection.

Notwithstanding GSK’s general and specific objections, and without waiving them, GSK agrees to meet and confer to discuss production of non-privileged documents, if any, that may be responsive to this request in a manner to be negotiated and agreed upon between the parties.

**REQUEST NO. 15:** Documents identifying, describing, or relating to your internal code of conduct or other policy relating to the ethical standards applicable to your employees.

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and the following phrases are vague, ambiguous, and undefined: “internal code of conduct,” “other policy,” and “ethical standards applicable to your employees.” GSK further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege, the work-product doctrine, the critical self-analysis privilege and/or self-evaluative privilege.

Notwithstanding GSK's general and specific objections, and without waiving them, GSK agrees to meet and confer to discuss production of non-privileged documents, if any, that may be responsive to this request in a manner to be negotiated and agreed upon between the parties.

**REQUEST NO. 16:** Documents relating to your compliance policy or other policies designed to ensure adherence to applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs.

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and the following phrases are vague, ambiguous, and undefined: "compliance policy," "other policies," and "applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs." GSK further objects to the extent this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege, the work product doctrine, the critical self-analysis privilege and/or self-evaluative privilege.

Notwithstanding GSK's general and specific objections, and without waiving them, GSK agrees to meet and confer to discuss production of non-privileged documents, if any, that may be responsive to this request in a manner to be negotiated and agreed upon between the parties.

**DOCUMENT REQUEST NO. 17:** Documents relating to any policy relating to the use or promotion of, or reference to, the spread of a drug in connection with the sales or marketing of that drug including, but not limited to:

- (a) documents that relate to or describe the policy, including consequences for violation of the policy;
- (b) documents that identify the date that the policy was established and/or became effective;
- (c) documents identifying, describing, or relating to the reason(s) for establishment of the policy;

- (d) documents identifying, describing, or relating to the distribution and dissemination of the policy to your employees;
- (e) documents identifying, describing, or relating to training provided to your employees regarding the policy; and
- (f) documents relating to any actual or potential violations of the policy, including any investigation, determination, and action taken by your company related to any such actual or potential violation.

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and the following terms are vague, ambiguous, and undefined: “policy relating to the use or promotion of, or reference to, the spread of a drug” and “in connection with the sales or marketing of that drug.” GSK further objects to this Request to the extent it calls for the production of documents that are protected by the attorney-client privilege, the work product doctrine, the critical self-analysis privilege and/or self-evaluative privilege.

Notwithstanding GSK’s general and specific objections, and without waiving them, GSK agrees to meet and confer to discuss production of non-privileged documents, if any, that may be responsive to this request in a manner to be negotiated and agreed upon between the parties.

**DOCUMENT REQUEST NO. 18:** Documents identifying or describing the reimbursement formula for prescription drugs used by the Wisconsin Medicaid Program, including but not limited to its formula for estimating acquisition cost or its use of AWP.

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents or information already in the possession of the Plaintiff.

Notwithstanding GSK’s general and specific objections, and without waiving them, GSK agrees to meet and confer to discuss production of non-privileged documents, if any, that may be responsive to this request in a manner to be negotiated and agreed upon between the parties.

**DOCUMENT REQUEST NO. 19:** All documents relating to the National Pharmaceutical Council, including but not limited to the following:

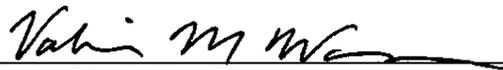
- (a) documents relating to your membership in the National Pharmaceutical Council;
- (b) all correspondence between you and the National Pharmaceutical Council;
- (c) all annual publications of the National Pharmaceutical Council entitled "Pharmaceutical Benefits Under State Medical Assistance Programs."

**RESPONSE:** In addition to its General Objections, which are incorporated herein by reference, GSK objects to this Request on the grounds that it is overly broad, unduly burdensome and to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence. GSK further objects to this Request to the extent it assumes or implies that GSK is a member of the National Pharmaceutical Council.

Notwithstanding GSK's general and specific objections, and without waiving them, GSK agrees to meet and confer to discuss production of non-privileged documents, if any, that may be responsive to this request in a manner to be negotiated and agreed upon between the parties.

Dated: July 27, 2007

Respectfully submitted,

By:   
Frederick G. Herold  
Valerie M. Wagner  
DECHERT, LLP  
2440 W El Camino Real, Suite 700  
Mountain View, CA 94040  
Tele: (650) 813-4800  
Fax: (650) 813-4848

Jon P. Axelrod  
DEWITT ROSS & STEVENS, S.C.  
2 East Mifflin Street, Suite 600  
Madison, WI 53703  
Tele: (608) 255-8891  
Fax: (608) 252-9243

Mark H. Lynch  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566  
Tele: (202) 662-6000  
Fax: (202) 662-6291

*Counsel for Defendant SmithKline Beecham Corporation,  
d/b/a GlaxoSmithKline*

STATE OF WISCONSIN,

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the Responses by SmithKline Beecham Corporation, d/b/a GlaxoSmithKline (“GSK”), to **RESPONSES AND OBJECTIONS BY SMITHKLINE BEECHAM CORPORATION, D/B/A GLAXOSMITHKLINE (“GSK”) TO PLAINTIFF’S FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** to be served on counsel of record by transmission to LNFS pursuant to Order dated December 20, 2005.

Dated this 27th day of July, 2007.

  
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Valerie M. Wagner