

---

**STATE OF WISCONSIN,**

Plaintiff,

Case No. 04-CV-1709

Unclassified - Civil: 30703

v.

**AMGEN INC., et al.,**

Defendants.

---

**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSE TO  
PLAINTIFF STATE OF WISCONSIN'S WRITTEN  
DISCOVERY REQUEST NO. 3 (TO ALL DEFENDANTS)**

---

Pursuant to Wisconsin Statutes §§ 804.01 and 804.09, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (collectively, the "Wisconsin Rules"), Defendant Novartis Pharmaceuticals Corporation ("Novartis"), by its undersigned counsel, responds as follows to Plaintiff State of Wisconsin's Written Discovery Request No. 3 (To All Defendants) on or about November 9, 2005 (the "Requests"):

**GENERAL OBJECTIONS**

Novartis expressly incorporates by reference all of the General Objections set forth in Novartis's Response to Plaintiff's First Set of Requests for Production of Documents to All Defendants. Any specific objections provided below are made in addition to these General Objections and a failure to reiterate a General Objection below does not constitute a waiver or limitation of that or any other objection. To the extent that Novartis states that it will produce documents responsive to any Request, such statement is made subject to, and without waiver or limitation of, all specific objections stated in response to such Request and all General Objections set forth below.

**A. OBJECTIONS TO DEFINITIONS**

1. The terms “you,” “your,” or “your company” shall mean the defendant, and their subsidiaries, divisions, predecessors, officers, agents and all other persons acting or purporting to act on behalf of defendants or their subsidiaries or predecessors.

**OBJECTION:** Novartis incorporates by reference its objection to the definition of the term “you,” and objects to the definition of “your” and “your company” as set forth in Definition No. 1 on the grounds that it is vague and ambiguous with respect to the language “all persons acting or purporting to act on behalf of defendants or their subsidiaries or predecessors.”

2. The term “document” and “documents” are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, as well as audio or video recordings or communications, oral statement, conversations or events. This definition includes, but is not limited to, any and all of the following: day-timers, journals, logs, calendars, handwritten notes, correspondence, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clipping, tables tabulations, financial statement, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, chart labels, packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tape, transcripts, recordings, and all other sources or formats from which data, information or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any kind which is not a part of insertion, or marking of any kind which is part of another document, is to be considered a separate document.

**OBJECTION:** Novartis objects to the definition of “document” and “documents” as set forth in Definition No. 2 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, Novartis’s obligations under the Wisconsin Rules. Novartis further objects to this definition to the extent it requires or seeks to require Novartis to: (i) produce documents or data in a particular form or format; (ii) convert documents or data into a particular or different file format; (iii) produce data, fields, records, or reports about produced

documents or data; (iv) produce documents or data on any particular media; (v) search for and/or produce any documents or data on back-up tapes; (vi) produce any proprietary software, data, programs, or databases; or (vii) violate any licensing agreement, copyright laws, or proprietary rights of any third party.

**B. OBJECTIONS TO INSTRUCTIONS**

1. In responding to these requests, Defendants are required to produce all responsive documents that are in the possession, custody, or control of any of them or any of their agents.

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose on Novartis the obligation to produce electronic materials in specified formats. Novartis further objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

2. All documents that respond, in whole or in part, to any portion of the production requests below shall be produced in their entirety, including all attachments and enclosures.

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose on Novartis the obligation to produce electronic materials in specified formats. Novartis further objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

3. If you withhold any document requested on the basis of a claim that it is protected from disclosure by privilege, work product, or otherwise, provide the following information separately for each such document:

- (a) The name and title of every author, sender, addressee, and recipient by category;
- (b) The date of the document;
- (c) The name and title of each person (other than stenographic or clerical assistants participating in preparation of the documents);

(d) The name and title of each person to whom the contents of the documents have been communicated by copy, exhibition, reading, or summary;

(e) A description of the nature and subject matter of the document is protected from disclosure;

(f) A statement of the basis on which it is claimed that the document is protected from disclosure; and

(g) The name and title of the person supplying the information requested in subparagraph(s) (a) through (f) above.

**OBJECTION:** Novartis objects to this instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

4. Notwithstanding a claim that a document is protected from disclosure, any document so withheld must be produced with the portion claimed to be protected excised.

**OBJECTION:** Novartis objects to this Instruction to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by applicable Wisconsin law. Novartis states that it will comply with this Instruction to the extent mandated by the rules of applicable Wisconsin law.

## DOCUMENT REQUESTS

**REQUEST NO. 7:** All documents listed in Appendix A attached hereto in unredacted form. Each of these documents is identified in the Third Amended Master Consolidated Class Action Complaint Amended to Comply With the Court's Class Certification Order on the page listed in Appendix A and with the bates number identified in Appendix A. (Those without bates numbers are otherwise identified, e.g., paragraph 290).

**RESPONSE TO REQUEST NO. 7:** None of the documents listed in Appendix A are Novartis documents, and, therefore, Novartis has no documents which are responsive to Request No. 7.

**REQUEST NO. 8:** Documents discussing or concerning the policy and practice of each defendant concerning the disclosures providers and pharmacy benefit managers may make of the drug price information they received from the defendant or drug wholesalers from 1993 to the present.

**RESPONSE TO REQUEST NO. 8:** In addition to its foregoing General Objections, Novartis objects to Request No. 8 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to this request on the grounds that it is vague and ambiguous with respect to Novartis' "practice concerning disclosures," in that Novartis does not make the disclosures in question, and the term "providers," which includes a broad range of providers which are not relevant to this lawsuit. Subject to and without waiving these and the foregoing General Objections, Novartis will produce non-privileged documents created during the period 1993 through June 12, 2003 which discuss or concern Novartis' policy regarding the disclosures that physicians, physicians groups and/or pharmacy benefit managers may make of the drug price information they received from Novartis during that period.

**REQUEST NO. 9:** Exemplar agreements between each defendant and providers and pharmacy benefit managers applying defendants' policies and practices relating to the disclosures such entities may make of the drug price information they receive from defendant or wholesalers.

**RESPONSE TO REQUEST NO. 9:** In addition to its foregoing General Objections, Novartis objects to Request No. 9 on the grounds that it is overly broad and unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence. Novartis further objects to this request on the grounds that it is vague and ambiguous with respect to Novartis' "practice concerning disclosures," in that Novartis does not make the disclosures in question, and the term "providers," which includes a broad range of providers which are not relevant to this lawsuit. Subject to and without waiving these and the foregoing General Objections, Novartis will produce representative agreements created during the period 1993 through June 12, 2003 between Novartis and physicians and/or physicians groups or between Novartis and pharmacy benefit managers which set forth Novartis' policy regarding the disclosures that such entities may make of the drug price information they received from Novartis during that period.

**REQUEST NO. 10:** Any sworn statement or deposition of any current or former employee or agent relating to any claim or investigation about or connected with: a) whether the defendant's published Average Wholesale Price (AWP) was or is inaccurate, or b) whether the defendant's published Wholesale Acquisition Cost (WAC) was or is inaccurate, or c) whether the defendant misrepresented its Average Wholesale Price or Wholesale Acquisition Cost to any publication, person, entity, or official, or d) whether the defendant violated a federal "best price" law or regulation, or e) whether the defendant's agents furnished free samples to providers for improper reasons.

**RESPONSE TO REQUEST NO. 10:** In addition to the foregoing General Objections, Novartis objects to Request No. 10 on the grounds that it is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Novartis also objects to this Request on the grounds that it is vague and ambiguous with respect to the language "agent" and "any claim." Novartis further objects to Request No. 10 to the extent that it suggests or implies that Novartis misrepresented its Average Wholesale Price or Wholesale Acquisition Cost to any publication, person, entity, or official; violated a federal "best price" law or regulation; or furnished free samples to providers for improper reasons. Subject to and without waiving this and the foregoing General Objections, Novartis states that it will produce sworn statements or deposition testimony of current and former Novartis employees to

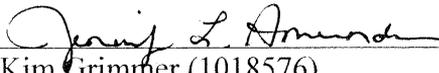
the extent that such employees have provided sworn statements or deposition testimony specifically concerning Novartis's practices relating to any claim or investigation about or connected with (a) the accuracy of Novartis's published Average Wholesale Price (AWP); (b) the accuracy of Novartis's published or published Wholesale Acquisition Cost (WAC); (c) Novartis's representations concerning its AWP or WAC to any publication, person, entity, or official; (d) Novartis's compliance with a federal "best price" law or regulation; or (e) the furnishing of free samples by Novartis's agents to providers who allegedly later sought improper reimbursement for such samples, subject to the terms of the Protective Order entered in this case on November 29, 2005.

Dated this 9<sup>th</sup> day of January, 2006.

Respectfully submitted,

Novartis Pharmaceuticals Corporation

By its attorneys,

  
Kim Grimmer (1018576)  
Jennifer L. Amundsen (1037157)  
Solheim Billing & Grimmer, S.C.  
U.S. Bank Plaza, Suite 301  
One South Pinckney Street  
P.O. Box 1644  
Madison, WI 53701-1644

Jane W. Parver (admitted *pro hac vice*)  
Saul P. Morgenstern (admitted *pro hac vice*)  
Mark Godler (admitted *pro hac vice*)  
KAYE SCHOLER LLP  
425 Park Avenue  
New York 10022  
(212) 836-8000