
STATE OF WISCONSIN,)	
)	
Plaintiff,)	Case No.: 04-CV-1709
)	
v.)	
)	
AMGEN INC., et. al.,)	
)	
Defendants.)	

**RESPONSE OF DEFENDANTS SCHERING-PLOUGH CORPORATION AND
WARRICK PHARMACEUTICALS CORPORATION TO PLAINTIFF'S REQUEST
FOR PRODUCTION OF DOCUMENTS NO. 5**

Pursuant to the Wisconsin Rule of Civil Procedure 804.09, Schering-Plough Corporation (“Schering-Plough”) and Warrick Pharmaceuticals Corporation (“Warrick”), (collectively “Respondents”), by and through their undersigned counsel, respond to Plaintiff’s Fifth Set of Requests for Production of Documents (“Request”) as follows:

GENERAL OBJECTIONS

1. Respondents provide this response without waiver of or prejudice to their right, at any later time, to raise objections to: (a) the relevance, materiality, or admissibility of (i) the Request or any part thereof, (ii) statements made in this response to the Request or any part thereof, or (iii) any document produced pursuant to this response; or (b) any further demand for discovery involving or relating to the matters raised in the Request.

2. Respondents object to the place and time directed for the production of documents. Subject to and without waiving any objection set forth herein, Respondents will produce responsive documents and/or make them available for inspection and designation for copying at a mutually-agreeable time and location.

3. Respondents object to the Request to the extent that it demands production of any document covered by the attorney-client privilege or the work product doctrine, third-party confidentiality agreements or protective orders, or any other applicable privilege, immunity or protection. In the event any document subject to a privilege, immunity or protection is produced by Respondents, its production is inadvertent and does not constitute a waiver of any privilege, immunity or protection.

4. Respondents object to the Request to the extent that it calls upon Respondents for, and/or to reveal, legal conclusions to Plaintiff. Respondents' responses shall not be deemed to constitute admissions (i) that any particular document or thing exists, is relevant, or admissible in evidence, or (ii) that any statement or characterization in the Request is accurate or complete.

5. Respondents have not completed their investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the responses are based upon, and necessarily limited by, information now available to Respondents. Respondents reserve the right, at any time, to revise, correct, and to supplement, modify, or clarify the specific responses set forth below or the information disclosed therein. By this reservation, Respondents do not, however, assume a continuing responsibility to update their responses beyond the requirements of the Wisconsin Rules of Civil Procedure and the local rules of this Court, and they object to the Request to the extent it seeks to impose any such continuing obligation.

6. In the responses that follow, a statement that responsive documents will be produced does not mean that: (a) any documents exist; or (b) they are in Respondents' possession, custody, or control.

7. Respondents undertake to answer the Request only to the extent required by the Wisconsin Rules of Civil Procedure, the local rules of this Court, and other applicable law (collectively, "Rules"), and Respondents object to the Request to the extent that it purports to exceed, expand upon or conflict with those Rules. For example, and without limitation, Respondents object to Plaintiff's "definitions" and "instructions" to the extent Plaintiff intends to expand upon or alter the Rules. Respondents further object to the definitions of "you," "your," "your company," "document," and "documents" as set forth in Definitions No. 1 and 2 on the grounds that they are overly broad, unduly burdensome, vague, ambiguous, and to the extent they seek to impose discovery obligations that are broader than, or inconsistent with, Respondents' obligations under the Rules.

8. Respondents object to the Request (i) to the extent it calls for information generated after the date this action was commenced, or (ii) to the extent it calls for information pertaining to any time outside of the limitations periods applicable to any of Plaintiff's claims; because the Request is to this extent overly broad and unduly burdensome, and seeks information that is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

9. Respondents object to the Request as 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 seek information relating to Respondents' drugs that have not been identified in the Amended Complaint.

10. Respondents object to each Request as 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 seek information relating to a period of time prior to June 16, 1998 (which is outside of any applicable statute of limitations) and/or after January 9, 2002 (as of which date Warrick was, on its own accord, regularly furnishing the State of Wisconsin with a monthly letter reporting its high and low contract prices, net of described discounts, for each of their three main classes of trade for the previous month; and, as of which date Schering Corporation was, on its own accord, regularly furnishing the State of Wisconsin with a quarterly letter showing, among other things, a Net Direct Price for each branded product and package sold by Schering Corporation). Except as specifically stated below, and subject to and without waving any objection, Respondents' responses herein shall be limited to the period between June 16, 1998, and January 9, 2002.

11. Respondents object to each request to the extent that it may be construed as calling for the production of confidential information relating to a patient. Respondents will not produce any such material to the extent they are under any obligation to maintain the patient information in confidence. Respondents will not disclose such material unless the patient grants permission to do so.

12. Respondents object to the Request as unduly burdensome to the extent that it seeks documents that are available, in a way that would be less burdensome or expensive, from a public source or some other source available to the Plaintiff.

13. Respondents object to the Request to the extent it seeks information regarding drugs other than the drugs that are at issue in this litigation or concern matters not related to Wisconsin, because such information is not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

14. Any production of documents or information responsive to requests to which Respondents have objected is not intended to and does not waive those or any other objections.

15. Respondents object to this Request to the extent it seeks confidential or proprietary information, and will not produce documents containing confidential or proprietary information unless pursuant to an appropriate protective order. Respondents' production and responses to the Request are supplied for use in this litigation and for no other purpose.

16. Respondents object to the Request to the extent that it is indefinite and/or fails to describe the categories of documents to be produced with reasonable particularity, and to the extent that it employs terms or definitions that render the Request vague or ambiguous. Except as otherwise stated, Respondents will interpret any such term based on its understanding of the term's usage, if any, by Respondents and/or in the pharmaceutical industry.

17. Respondents object to the Request to the extent that it requests documents not within Respondents' possession, custody or control.

18. Respondents object to each and every Request to the extent that it purports to require it to search through an unduly large number of documents or to search for documents that are not accessible, available or locatable without imposing an undue burden upon the Respondents. Respondents have already reviewed and produced a significant quantity of documents concerning the drugs involved in this case in connection with a related case, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.) ("MDL production"). Subject to and without waiving any objection, Respondents are willing to produce and have produced responsive documents from the MDL production and certain state productions as stated in the responses that follow. Any further obligation to search and review documents is unduly burdensome.

19. Respondents expressly incorporate these General Objections into each specific response to the request set forth below as if set forth in full therein. These General Objections form a part of the response to each and every request and are set forth here to avoid the unnecessary duplication and repetition that would result from restating them for each response below. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

RESPONSES TO DOCUMENT PRODUCTION REQUESTS

DOCUMENT 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 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.

RESPONSE:

In addition to their General Objections, Respondents object to Request No. 14 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence. Respondents further object to Request No. 14 on the grounds that the terms and phrases "lobbying efforts," "third-party lobbyists," "lobbyist organizations," and "external third-party lobbyists" are not defined, rendering this request vague, ambiguous, overbroad, and unduly burdensome. Respondents further object to Request No. 14 to the extent it seeks production of documents that are protected by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiving their general and specific objections, Respondents have already produced in connection with the September 2006 deposition of Harvey Weintraub, all of the documents included in the MDL production and certain state productions. Accordingly, Respondents agree to undertake a reasonable search for non-privileged documents potentially responsive to this Request subsequent to Plaintiff's review of said production and in a manner to be negotiated and agreed upon between the parties.

DOCUMENT 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 their General Objections, Respondents object to Request No. 15 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter involved in the pending action, including the claim or defense of any party in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence. Respondents further

object to Request No. 15 on the grounds that the terms and phrases "other policy," and "ethical standards applicable to your employees" are not defined, rendering this request vague, ambiguous, overbroad, and unduly burdensome.

Subject to and without waiving their general and specific objections, Respondents have already produced in connection with the September 2006 deposition of Harvey Weintraub, all of the documents included in the MDL production and certain state productions. Accordingly, Respondents agree to undertake a reasonable search for non-privileged documents potentially responsive to this Request subsequent to Plaintiff's review of said production and in a manner to be negotiated and agreed upon between the parties.

DOCUMENT 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 their General Objections, Respondents object to Request No. 16 because it is overly broad and unduly burdensome. Respondents further object to Request No. 16 on the grounds that the terms and phrases "compliance policy," "other policies," and "applicable statutes, regulations and requirements for pharmaceutical manufacturers in connection with the Medicare and Medicaid programs" are not defined, rendering this request vague, ambiguous, overbroad, and unduly burdensome.

Subject to and without waiving their general and specific objections, Respondents have already produced in connection with the September 2006 deposition of Harvey Weintraub, all of the documents included in the MDL production and certain state productions. Accordingly, Respondents agree to undertake a reasonable search for non-privileged documents potentially

responsive to this Request subsequent to Plaintiff's review of said production and 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 our 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 their General Objections, Respondents object to Request No. 17 because it is overly broad and unduly burdensome. Respondents further object to Request No. 17 on the grounds that the terms and phrases "policy relating to the use or promotion of, or reference to, the spread of a drug" and "in connection with the sales and marketing of that drug" are not defined, rendering this request vague, ambiguous, overbroad, and unduly burdensome.

Subject to and without waiving their general and specific objections, Respondents have already produced in connection with the September 18, 2006 deposition of Harvey Weintraub, all of the documents included in the MDL production and certain state productions.

Accordingly, Respondents agree to undertake a reasonable search for non-privileged documents

potentially responsive to this Request subsequent to Plaintiff's review of said production and 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 their General Objections, Respondents object to Request No. 18 because it is overly broad, unduly burdensome, and seeks information already in the possession of the Plaintiff.

Subject to and without waiving their general and specific objections, Respondents have already produced in connection with the September 2006 deposition of Harvey Weintraub, all of the documents included in the MDL production and certain state productions. Accordingly, Respondents agree to undertake a reasonable search for non-privileged documents potentially responsive to this Request subsequent to Plaintiff's review of said production and 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 their General Objections, Respondents object to Request No. 19 because it is overly broad, unduly burdensome, and seeks information not relevant to the subject matter

involved in the pending action, including the claim or defense of any party in this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving their general and specific objections, Respondents have already produced in connection with the September 2006 deposition of Harvey Weintraub, all of the documents included in the MDL production and certain state productions. Accordingly, Respondents agree to undertake a reasonable search for non-privileged documents potentially responsive to this Request subsequent to Plaintiff's review of said production and in a manner to be negotiated and agreed upon between the parties.

 7/27/2007

Patryk J. Drescher
ROPES & GRAY LLP
One Metro Center
700 12th Street, N.W.
Suite 900
Washington, DC 20005
Telephone: (202) 508-4600
Facsimile: (202) 508-4650

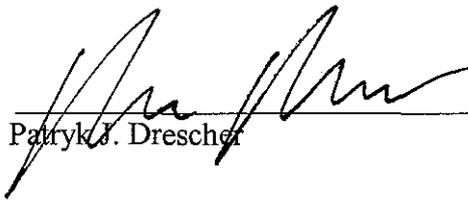
Brien T. O'Connor
John P. Bueker
ROPES & GRAY LLP
One International Place
Boston, MA 02110-2624
Telephone: (617) 951-7000
Facsimile: (617) 951-7050

Earl H. Munson, SBN 1008156
BOARDMAN, SUHR, CURRY
& FIELD LLP
One South Pinckney Street, 4th Floor
Madison, WI 53703
Telephone: (608) 257-9521
Facsimile: (608) 283-1709

*Attorneys for Defendants Schering-Plough Corp., and
Warrick Pharmaceuticals Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of July 2007, a true and correct copy of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Response to Plaintiff's Fifth Request for Production of Documents was served upon all counsel of record via Lexis Nexis File & Serve electronic service.



Patryk J. Drescher