



3. TAP's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and TAP reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in the Requests, unless a specific definition or instruction has been provided and/or agreed upon. Notwithstanding any objection set forth herein, and without waiving any such objection, TAP will negotiate with Plaintiff in an effort to reach an agreement regarding the scope of the Requests, and will supplement or amend these objections and responses consistent with those negotiations.

4. To the extent TAP's responses to Plaintiff's Requests contain confidential information subject to any Protective Order in this Matter, they must be treated accordingly.

5. TAP's responses to Plaintiff's Requests are limited to the TAP products currently at issue in this litigation, namely certain NDCs of Prevacid® and PrevPac® (hereinafter referred to as "Prevacid®").

6. In responding to these Requests, TAP will search for and produce information and documents, not already produced, from divisions responsible for selling and marketing the Subject Drugs, to non-hospitals and from the individuals responsible for communicating with representatives of the Medicare and Wisconsin Medicaid agencies regarding the Prevacid®.

7. Where TAP states herein that it will produce documents in accordance with the Wisconsin Rules of Civil Procedure, it will provide such documents to the extent they exist and can be reasonably obtained. By stating that TAP will produce any documents or things responsive to a particular request, TAP does not represent that any such documents or things

exist or are within its possess, custody or control. TAP's responses are limited to documents within its possessions, custody or control, and that are reasonably accessible.

8. TAP's responses to Plaintiff's Requests are submitted without prejudice to TAP's right to produce evidence of any subsequently discovered fact. TAP accordingly reserves its right to further production as additional facts are ascertained.

9. The information and documents supplied herein are for use in this litigation and for no other purpose.

### **GENERAL OBJECTIONS**

TAP objects generally to the Requests as follows:

1. TAP objects to Plaintiff's "Definitions" and "Instructions" to the extent Plaintiff intends to expand upon or alter TAP's obligations under the Wisconsin Rules of Civil Procedure. TAP will comply with applicable rules of civil procedure in providing its responses and objections to the Requests.

2. TAP objects to each Request to the extent that it calls for the identification or production of documents or information not relevant to the issues in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

3. TAP objects to the definition of "Documents" on the grounds that it is vague and ambiguous and to the extent that it seeks to impose obligations beyond those imposed by the applicable Wisconsin Rules of Civil Procedure. TAP further objects to this definition to the extent that it purports to require TAP 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 TAP as an accommodation to Plaintiff shall not be deemed to constitute a waiver of this objection.

4. TAP objects to the extent that any Request seeks information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection.

5. TAP objects to each Request to the extent that it calls for production of documents or information not within its possession, custody, or control. In responding to these requests, TAP has undertaken or will undertake a diligent and reasonable search of documents and information within TAP's current possession, custody, or control.

6. TAP objects to each Request to the extent that it calls for information that is confidential, proprietary, and/or a trade secret of a third party or is protected by an agreement with a third-party. Any such materials produced will be subject to the Protective Order entered in this action.

7. TAP objects to each Request to the extent that it seeks disclosure of information that is a matter of public record, is equally available to the Plaintiff, or is already in the possession of the Plaintiff.

8. TAP expressly incorporates the above General Objections into each specific response to the Requests set forth below as if set forth in full therein. The response to a Request shall not operate as a waiver of any applicable specific or general objection to the Request.

## **RESPONSE TO SPECIFIC REQUESTS**

**DOCUMENT REQUEST NO. 14:** All documents relating to lobbying efforts of you, or any individual or entity action 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.

**RESPONSE:** In addition to its General Objections, TAP objects to Request No. 14 on the grounds that it is overly broad, unduly burdensome, and the following phrases are vague, ambiguous, and undefined: "lobbying efforts," "third-party lobbyists," "lobbyist organizations," and "external third-party lobbyists." TAP further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving its general and specific objections, TAP agrees to produce all documents, if any, related to the drug Prevacid<sup>®</sup> produced to Plaintiffs in the MDL 1456 class action, to the extent they are relevant to the Request. TAP also agrees to undertake a reasonable search for non-privileged documents potentially responsive to this Request 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 its General Objections, TAP objects to Request No. 15 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.” TAP further objects to this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or work-product doctrine.

Subject to and without waiving its general and specific objections, TAP agrees to produce all documents, if any, related to the drug Prevacid<sup>®</sup> produced to Plaintiffs in the MDL 1456 class action, to the extent they are relevant to the Request. TAP also agrees to undertake a reasonable search for non-privileged documents potentially responsive to this Request 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 its General Objections, TAP objects to Request No. 16 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.” TAP further objects to the extent this Request to the extent it seeks the production of documents that are protected by the attorney-client privilege and/or the work product doctrine. TAP further objects to this Request as overly broad because no TAP product at issue in this case is covered by Medicare.

Subject to and without waiving its general and specific objections, TAP agrees to produce all documents, if any, related to the drug Prevacid<sup>®</sup> produced to Plaintiffs in the MDL 1456 class action, to the extent they are relevant to the Request. TAP also agrees to undertake a reasonable search for non-privileged Medicaid-related documents potentially 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, TAP objects to Request No. 17 on the grounds that 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.” TAP further objects to this Request as overly broad because: (i) it is not limited to Prevacid<sup>®</sup>, a brand-name pill and the only TAP product at issue in this case; and (ii) there is no reason or incentive to market the purported “spread” on a brand-name pill such as Prevacid<sup>®</sup>. TAP further objects to this request to the extent it calls for the production of documents that are protected by the attorney-client privilege and/or the work product doctrine.

Subject to and without waiving its general and specific objections, TAP agrees to produce all documents, if any, related to the drug Prevacid<sup>®</sup> produced to Plaintiffs in the MDL 1456 class action, to the extent they are relevant to the Request. TAP also agrees to undertake a reasonable search for non-privileged documents potentially 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, TAP objects to Request No. 18 on the grounds that it is overly broad, unduly burdensome, and seeks information already in the possession of the Plaintiff.

Subject to and without waiving its general and specific objections, TAP agrees to produce all documents, if any, related to the drug Prevacid<sup>®</sup> produced to Plaintiffs in the MDL 1456 class action, to the extent they are relevant to the Request. TAP also agrees to undertake a reasonable search for non-privileged documents potentially responsive to this Request in a manner to be negotiated and agreed upon between the parties.

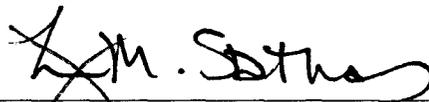
**DOCUMENT REQUEST NO. 19:** All documents relating to the National Pharmaceutical Council, including but not limited to the following:

- (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, TAP objects to Request No. 19 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. TAP further objects to this Request because TAP is not currently a member of the National Pharmaceutical Council.

Subject to and without waiving its general and specific objections, TAP agrees to produce all documents, if any, related to the drug Prevacid<sup>®</sup> produced to Plaintiffs in the MDL 1456 class action, to the extent they are relevant to the Request. TAP also agrees to undertake a reasonable search for non-privileged documents potentially responsive to this Request in a manner to be negotiated and agreed upon between the parties.

Dated: July 27, 2007



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**Certificate of Service**

I, Beverly K. Schettler, hereby certify that on this 27th day of July 2007, a true and correct copy of **TAP PHARMACEUTICAL PRODUCTS INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS** was served on all counsel of record by Lexis Nexis File & Serve®.

  
Beverly K. Schettler