

---

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

---

**TAP PHARMACEUTICAL PRODUCTS INC.’S RESPONSES AND OBJECTIONS TO  
PLAINTIFF STATE OF WISCONSIN’S SIXTH SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS**

Pursuant to Wisconsin Rule of Civil Procedure 804.09, defendant TAP Pharmaceutical Products Inc. (“TAP”), by its attorneys, objects and responds to Plaintiff’s Sixth Set for Requests for Production of Documents to All Defendants (“Requests”) as follows:

**PRELIMINARY STATEMENT**

1. These responses and objections are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, privilege, status, propriety, and admissibility, and to any and all other objections that may be applicable at a trial or other hearing or proceeding, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. TAP’s responses and objections shall not be deemed to constitute admissions:
- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
  - b. that any statement or characterization in the Requests is accurate or complete.

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. If and 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 possession, custody or control. No objection made herein, or lack thereof, is an admission by TAP as to the existence or non-existence of any documents. TAP's responses are limited to documents within its possession, custody or control, and that are reasonably accessible.

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<sup>®</sup> and PreVPac<sup>®</sup> (hereinafter referred to as "Prevacid<sup>®</sup>").

6. 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.

7. 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 and the Court's Local Rules and Orders. TAP will comply with the Wisconsin 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 not reasonably calculated to lead to the discovery of admissible evidence or is overly broad, unduly burdensome, ambiguous, or vague.

3. TAP objects to the definition of "Document" and "Documents" as vague, ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. TAP further objects to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, TAP's obligations under the Wisconsin Rules of Civil Procedure and the Court's Local Rules and Orders. TAP further objects to this definition to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, the consulting expert privilege, or any other applicable privilege, rule or doctrine.

4. TAP objects to the definition of "You," "Your," and "Your Company" as overly broad and unduly burdensome. TAP further object to this definition to the extent it seeks to impose discovery obligations that are broader than, or inconsistent with, TAP's obligations under

the Wisconsin Rules of Civil Procedure and the Court's Local Rules and Orders.

5. 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.

6. 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.

7. TAP objects to each Request to the extent that it seeks information and documents beyond 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 Subject Drugs.

8. 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.

9. 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.

10. TAP objects to the definition of time period covered by the Requests to the extent it encompasses any time period after June 3, 2004, the date Plaintiff filed its original Complaint in this case.

11. 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.

### **RESPONSES TO SPECIFIC REQUESTS**

**DOCUMENT REQUEST NO. 20:** The following documents relating to the Together RX programs:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the average wholesale price (“AWP”) of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the Together RX programs; and
- (e) documents identifying your prescription drugs covered by the Together Rx programs.

**RESPONSE:** In addition to the General Objections set forth above, TAP objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, and are outside the scope of permissible discovery. TAP specifically objects to this Request to the extent it seeks documents not relevant to the State’s claims, which are limited to Wisconsin. TAP further objects to this Request to the extent it seeks proprietary, commercially sensitive, or confidential documents or information.

**DOCUMENT REQUEST NO. 21:** All documents relating to any program of yours that provides, or is marketed as providing, a discount or savings to consumers for any of your

prescription drugs. Examples of such programs are the Novartis Savings Program a/k/a the Novartis Care Plan (Novartis Care Card), Pfizer for Living Program (Pfizer Share Card), Pfizer U Share Prescription Drug Discount Card, and the GlaxoSmithKline Orange Card. This request includes, but is not limited to, the following documents:

- (a) contracts or written agreements with providers (including doctors and retail pharmacies);
- (b) documents identifying or relating to the reimbursement to participating providers (including doctors and retail pharmacies) for the ingredient cost of covered prescription drugs, including but not limited to, any formula for reimbursement based on the AWP of such drugs;
- (c) documents identifying or relating to the amount of the dispensing fee paid to participating providers (including doctors and retail pharmacies) for covered prescription drugs;
- (d) documents identifying or relating to the eligibility requirements for participation in the program; and
- (e) documents identifying your prescription drugs covered by the program.

**RESPONSE:** In addition to the General Objections set forth above, TAP objects to this Request on the grounds that it is overly broad, unduly burdensome, and seeks documents that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence, and that are outside the scope of permissible discovery. TAP specifically objects to this Request to the extent it seeks documents not relevant to the State's claims, which are limited to Wisconsin. TAP further objects on the grounds that the phrases and terms "any program of yours that provides or is marketed as providing," "a discount or savings," and "consumers" are vague, ambiguous, and undefined. TAP also objects to this Request to the extent it seeks documents relating to programs that "provide, or [are] marketed as providing, a discount or savings to" consumers of TAP's products because such documents are neither relevant to the subject matter involved in the pending action, nor likely to lead to the discovery of admissible evidence. Finally, TAP objects to this Request to the extent it seeks proprietary, commercially sensitive, or confidential documents or information.

Dated: February 14, 2008

DEFENDANT TAP PHARMACEUTICAL  
PRODUCTS INC.

/s/ Jeremy P. Cole

James R. Daly

Lee Ann Russo

Jeremy P. Cole

JONES DAY

77 West Wacker

Chicago, IL 60601-1692

312.782.3939

312.782.8585 (fax)

Allen C. Schlinsog, Jr.

Mark A. Cameli

REINHART BOERNER VAN DEUREN S.C.

1000 North Water Street

P.O. Box 2965

Milwaukee, WI 53201-2965

(414)298-1000

(414)298-8097 (fax)

Lynn M. Stathas

REINHART BOERNER VAN DEUREN S.C.

22 East Mifflin Street

P.O. Box 2018

Madison, WI 53701-2018

(608)229-2200

(608)229-2100 (fax)

**CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing TAP PHARMACEUTICAL PRODUCTS INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFF STATE OF WISCONSIN'S SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO ALL DEFENDANTS to be served upon all counsel of record electronically via LexisNexis, this 14th day of February, 2008.

/s/ Jeremy P. Cole \_\_\_\_\_  
Jeremy P. Cole