DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

MEMORANDUM

DATE: September 15, 2006

TO: Randall Lutter, Ph.D.
Associate Commissioner for
Policy and Planning
Food and Drug Administration

THROUGH: Jenny Slaughter
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

FROM: Igor Cerny, Pharm.D. /S/
Director, Advisors and Consultants Staff
Center for Drug Evaluation and Research

SUBJECT: Conflict of Interest Waiver for Richard Haubrich, M.D.

I am writing to request a waiver for Richard Haubrich, M.D., a member of the Antiviral Drugs Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). The appointing official may grant waivers under section 208(b)(3) where "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved" and where the individual has made a disclosure of the financial interests at issue. We have determined that you are the appointing official for purposes of section 208. Therefore, you have the authority to grant Richard Haubrich, M.D., a waiver under 18 U.S.C. §208(b)(3).

Section 208(a) prohibits Federal executive branch employees, including special Government employees, from participating personally and substantially in matters in which the employee, or any other person whose interests are imputed to the employee under 18 U.S.C. §208, has a financial interest. Since Dr. Haubrich is a special Government employee, he is under a statutory obligation to refrain from participating in an official capacity in any particular matter having a direct and predictable effect on

a financial interest attributable to him, his spouse, minor child, or general partner; an organization or entity for which he serves as an officer, director, trustee, general partner, or employee; and, a person with whom he is negotiating for, or has an arrangement concerning, prospective employment.

Dr. Haubrich has been asked to participate in all official matters concerning clinical trial design issues in the development of products for the treatment of chronic hepatitis C infection, particularly those related to the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up. These matters are coming before the Antiviral Drugs Advisory Committee for consideration and are considered particular matters of general applicability.

The function of the Antiviral Drugs Advisory Committee, as stated in its Charter, is to review and evaluate available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome(AIDS), human immunodeficiency virus (HIV) related illnesses, and other viral, fungal and mycobacterial infections, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Haubrich has advised the Food and Drug Administration that he has financial interests that could potentially be affected by his participation in the matter described previously. **Dr. Haubrich's employer, the University of California at San Diego, was awarded a ——— research contract from ——— to conduct a long-term, follow-up study of an affected product, ———., for hepatitis C virus and HIV co-infections. The study began in May, 2002 and is ongoing. Because of the University's policy of listing all seven HIV researchers as sub-investigators on all HIV-related studies, Dr. Haubrich is listed as a sub-investigator for this study. According to Dr. Haubrich, he was not involved in the design, analysis, data collection, or conduct of the study. In addition, he never actually saw or enrolled any of the patients in the study. Consequently, Dr. Haubrich did not receive any personal remuneration or salary support from the funds.**

Dr. Haubrich is also negotiating a consulting contract, estimated to be worth less than ——— per year, with ——— concerning an unrelated product, ———. ——— is a drug that is used in the treatment of HIV infections.

As a member of the Antiviral Drugs Advisory Committee, Dr. Haubrich potentially could become involved in matters that could affect his financial interests. Under 18 U.S.C. §208(a), he is prohibited from participating in such matters. However, as noted above, you have the authority under 18 U.S.C. §208(b)(3) to grant a waiver permitting Dr. Haubrich to participate in such matters as you deem appropriate.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to Dr. Richard Haubrich that would permit him to participate in the matter described previously.

First, Dr. Haubrich's interest in ——— is not so substantial as to preclude his participation in the matter described previously. Dr. Haubrich does not receive any personal remuneration for being listed as a sub-investigator on the ———-sponsored study of ——— and his compensation for consulting on ——— is nominal.

Second, the product that is being studied, ———, is already approved and marketed for the treatment of HCV infections.

Third, the uniqueness of Dr. Haubrich's qualification justifies granting this waiver. Dr. Haubrich is considered one of the foremost experts in the area of resistance testing. The advisory committee on hepatitis C will address multiple populations infected with the hepatitis C virus and it will be important to discuss both development of resistance in naïve subjects and treatment of populations with resistant virus. Dr. Haubrich also brings additional statistical expertise to the committee. The committee has only one other statistician.

Fourth, the difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee also justifies granting this waiver.

Because the universe of hepatologists is small, and that of those involved in the care and clinical evaluation of therapy for hepatitis C virus infections is even smaller, it has been exceedingly difficult to find consultants and committee members, who are knowledgeable about clinical trial design issues in the development of products for the treatment of chronic HCV infected population, yet have not had any involvement with sponsors in the development of new treatments for this disease. The division feels that only hepatologists have the requisite expertise to discuss both treatment of HCV infections and clinical trial design. A reduction in the number of hepatologists in the committee, therefore, will render much of the discussion useless, and may call into question the validity of any committee recommendations to the Agency.

Moreover, this waiver is also justified, in part, because of the general nature of particular matters of general applicability. It is well recognized that particular matters of general applicability pose far less risk of a conflict of interest. Particular matters of general applicability include regulations, legislation, guidelines, points-to-consider, and policies governing classes of organizations, individuals, and products. Particular matters of general applicability do not include particular matters involving specific parties, such as specific grants, contracts, recommendations regarding a specific product, or enforcement matters involving known parties. The committee's discussions of clinical trial design issues such as the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up in the development of products for the treatment of chronic HCV infections will not have a unique and distinct impact on Dr. Haubrich's financial interest, but rather may affect classes of similarly situated products and manufacturers to the same extent. While this participation may be covered by section 208, it poses far less risk of bias than participation in matters that relate specifically to a particular firm or organization in which Dr. Haubrich has an interest.

Further, the Federal Advisory Committee Act requires that committee memberships be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee. Also, the committee's intended

purpose would be significantly impaired if the Agency could not call upon experts who have become eminent in their fields, notwithstanding the financial interests and affiliations they may have acquired as a result of their demonstrated abilities. Richard Haubrich, M.D., is Associate Professor of Medicine, Division of Infectious Diseases, University of California at San Diego. Dr. Haubrich is board certified in internal medicine and infectious diseases. The division of antiviral drugs considers him to be one of few experts in the area of resistance testing qualified to address the matters coming before the committee. The advisory committee on hepatitis C will address multiple populations infected with the hepatitis C virus and it will be important to discuss both development of resistance in naïve subjects and treatment of populations with resistant virus. I believe that Dr. Haubrich's participation will help provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant Richard Haubrich, M.D., a waiver that would allow him to participate in all official matters concerning clinical trial design issues in the development of products for the treatment of chronic hepatitis C virus infection, particularly those related to the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up. I believe that such a waiver is appropriate because in this case, the need for the services of Richard Haubrich, M.D., outweighs the potential for a conflict of interest created by the financial interests attributable to him.

CONCURRENCE: /s/ 9/26/06

Jenny Slaughter
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

Date

DECISION:

X Waiver granted based on my determination, made in accordance with section 18 U.S.C. §208(b)(3), that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest attributable to the individual.

_____ Waiver denied.

/s/ 9/28/06

Randall Lutter, Ph.D.
Associate Commissioner for
Policy and Planning
Food and Drug Administration

Date