DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

MEMORANDUM

DATE: July 31, 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 David Harrington, Ph.D.

I am writing to request a waiver for David Harrington, Ph.D., a member of the Oncologic Drugs Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). The appointing official may grant waivers under 18 U.S.C. §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. You are the appointing official for purposes of section 208; therefore, you have the authority to grant Dr. Harrington a waiver under section 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. Harrington 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. Harrington has been asked to participate in all official matters regarding New Drug Application (NDA) 020-287, Fragmin (dalteparin sodium), sponsored by Pfizer, Inc., for the proposed indication of extended treatment of symptomatic venous thromboembolism (VTE), such as proximal deep venous thromboses (DVT) and/or pulmonary embolism (PE), to reduce the occurrence of VTE in patients with cancer; and (2) NDA 21-660, Abraxane (paclitaxel protein-bound particles for injectable suspension)(albumin-bound), sponsored by Abraxis BioScience, Inc., including trial design issues for adjuvant treatment of node-positive breast cancer. These matters are coming before the Oncologic Drugs Advisory Committee.

The functions of the Oncologic Drugs Advisory committee, as stated in its charter, are to review and evaluate data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer, and make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. David Harrington has advised the Food and Drug Administration that he has a financial interest that could potentially be affected by his participation in the matters at issue. **Dr. Harrington is Professor of Biostatistics at the Harvard School of Public Health, and Chief, Division of Biostatistics and Computational Biology at the Dana-Farber Cancer Institute. A faculty member in the department, Dr. ———— , has a pending research contract with ———— to provide statistical analysis for a study of ———— , a competing product to Abraxane, for the adjuvant treatment of breast cancer. Dr. Harrington's only involvement in the study will be administrative, as Division Director. He would receive no personal remuneration or salary support from the funds received. ———— manufactures competing products to Fragmin and Abraxane.**

As a member advising the Oncologic Drugs Advisory Committee, Dr. could potentially become involved in matters that could affect his financial interests. Under section 208, 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. David Harrington 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 David Harrington, Ph.D., that would permit him to participate in the matters previously described.

First, although Dr. Harrington's employer has financial interests in ————————, he himself has no personal financial interest in either firm or their products. Generally, there is less likelihood that the judgment of the individual will be affected by an imputed interest of an employer than by a personal financial interest.

Second, Dr. Harrington's involvement with these studies is limited. He does not have any direct role in the study or the pending contract. His only involvement will be as Chief of the Division of Biostatistics and Computational Biology at the Dana-Farber Cancer Institute.

Third, it is important to note that ———— is already approved and marketed for adjuvant treatment of breast cancer.

Fourth, it is not clear that any current or future financial support from ———————— to Dr. Harrington would be directly and predictably affected by his participation in the issues at hand.

Moreover, the Agency has found it difficult to obtain the services of qualified biostatisticians who do not have similar, or even worse, conflict of interest. Given the large number of competing products and their sponsors, most qualified biostatisticians have or have had some involvement with Fragmin, Abraxane, the competing products, and/or their sponsors. Dr. Harrington is the only biostatistician participating in this meeting.

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 various advisory committee members and Dr. Harrington's participation will contribute to the balance of views represented and the diversity of opinions and expertise. 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. David Harrington, Ph.D., is Professor of Biostatistics at the Harvard School of Public Health, and

Chief, department of Biostatistics and Computational Biology at the Dana-Farber Cancer Institute. Dr. Harrington is an expert in inferential statistics, efficient nonparametric tests and regression methods for right-censored data, sequential designs for clinical trials, nonparametric methods for estimating nonlinear covariate effects on survival, and methods for analyzing survival data when some covariates have missing observations. In addition to his duties as a biostatistician, Dr. Harrington is also a cancer researcher at the institute. As such, he co-chaired the International non-Hodgkin's Lymphoma Prognostic Factors Project, a collaboration of United States, Canadian and European treatment centers, that produced an internationally agreed upon definition of risk factors for early relapse or death in patients with aggressive non-Hodgkin's lymphoma. These definitions are used at many centers to decide which patients should be candidates for intensive chemotherapy, and which should be candidates for more standard approaches. I believe that Dr. Harrinton's expertise in biostatistics and his vast experience as a cancer researcher will contribute to the diversity of expertise and viewpoints represented and will help provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant David Harrington, Ph.D., a waiver that will permit him to participate in all official matters concerning (1) New Drug Application (NDA) 020-287, Fragmin (dalteparin sodium), sponsored by Pfizer, Inc., for the proposed indication of extended treatment of symptomatic venous thromboembolism (VTE), such as proximal deep venous thromboses (DVT) and/or pulmonary embolism (PE), to reduce the recurrence of VTE in patients with cancer; and (2) NDA 21-660, Abraxane (paclitaxel protein-bound particles for injectable suspension)(albumin-bound), sponsored by Abraxis BioScience, Inc., including trial design issues for adjuvant treatment of node-positive breast cancer. I believe that such a waiver is appropriate because in this case, the need for the services of Dr. David Harrington outweighs the potential for a conflict of interest created by the financial interest attributed to him.

CONCURRENCE: /s/ 8/3/06

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/ 8/10/06

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

Date