DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

DATE: August 6, 2007

TO: Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy
Food and Drug Administration

THROUGH: Vince Tolino
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 Frederick Kaskel, M.D., Ph.D.

I am writing to request a waiver for Frederick Kaskel, M.D., Ph.D., a member of the Cardiovascular and Renal 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 Dr. Kaskel 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. Kaskel 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. Kaskel has been asked to participate in all official matters concerning the discussions of updated information on the risks and benefits of erythropoiesis-stimulating agents, when used in the treatment of anemia due to chronic renal failure. This discussion follows a March 9, 2007, FDA Public Health Advisory regarding the use of these agents.

This matter is coming before a joint meeting of the Cardiovascular and Renal Drugs and the Drug Safety and Risk Management Advisory Committees. This issue is a particular matter involving specific parties.

The function of the Cardiovascular and Renal 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 cardiovascular and renal disorders and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Kaskel has advised the Food and Drug Administration that he has financial interests that could potentially be affected by his participation in the matter at issue. Dr. Kaskel owns a minimal amount of stock in ——— and ——————————. According to Dr. Kaskel these stocks represent less than -% of his total net worth. ——————————————————————————————. ————, a subsidiary of ——————————, is the sponsor of an investigational erythropoiesis-stimulating agent.

As a member of the Cardiovascular and Renal Drugs Advisory Committee, Dr. Kaskel 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. Kaskel 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. Kaskel that would permit him to participate in the matter previously described.

First, it is important to consider that Dr. Kaskel's interests are not so substantial as to preclude his participation in the meeting. These stocks represent a small portion of his total net worth.

Second, the uniqueness of Dr. Kaskel's qualification justifies granting this waiver. According to the Review Division, the need for Dr. Kaskel is great, Dr. Kaskel has experience in nephrology, including pediatric nephrology. He has extensive clinical research and patient care experience in nephrology and is unique among the committees' members in that this experience is within pediatric patients. Pediatric patients with nephrology conditions may be importantly impacted by decisions regarding the erythropoiesis-stimulating agents and Dr. Kaskel's perspectives would focus attention to this relatively under-represented patient population. Dr. Kaskel's insight and perspective would help ensure a thorough and balanced discussion, especially as it applies to pediatric patients. Such a discussion is imperative because of the potential significant public health impact of the committees' recommendations.

Additionally, the Agency was unable to find a similarly qualified individual without disqualifying financial interests to serve at this meeting. Because erythropoiesis-stimulating agents are associated with increased thromboembolic risks in patients with chronic kidney failure, it is especially important to include specialists with a wide array of nephrology expertise in this meeting. Eight [8] nephrologists were invited to participate, of whom two [2] can not attend (one was recused, and the other did not complete the appointment paperwork in time). Dr. Kaskel's pediatric expertise is unique among the nephrologists attending the meeting, and his perspective will advance the Agency's goal of improving pediatric drug development and safety.

Finally, 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 committees' 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. Dr. Frederick Kaskel is Director, Division of Pediatric Nephrology, Vice Chairman, Affiliate & Network Relations, Department of Pediatrics, Attending Physician, and Professor of Pediatrics, the Albert Einstein College of Medicine, Children's Hospital at Montefiore. He is board certified in pediatrics and is a nationally and internationally recognized leader and expert in pediatric nephrology. He has performed basic and clinical research in numerous areas of kidney disease in children,

specifically related to the diagnosis and management of hypertension in children, pediatric chronic renal failure, and the physiologic determinants of neonatal renal function. I believe his participation will contribute to the diversity of opinions and expertise represented on the committees and will provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant Frederick Kaskel, M.D., Ph.D., a waiver that will permit him to participate in all official matters concerning the discussions of updated information on the risks and benefits of erythropoiesis-stimulating agents, when used in the treatment of anemia due to chronic renal failure. This discussion follows a March 9, 2007, FDA Public Health Advisory regarding the use of these agents. I believe that such a waiver is appropriate because in this case, the need for the services of Dr. Frederick Kaskel outweighs the potential for a conflict of interest created by the financial interest attributable to him.

CONCURRENCE: /S/ 8/08/07

Vince Tolino
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/ 8/20/07

Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy
Food and Drug Administration

Date