DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

DATE: November 1, 2007

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

THROUGH: Vince Tolino /S/ 10-31-07
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

Michael F. Ortwerth, Ph.D. /S/ 11-8-07
Deputy Director, Advisory Committee Oversight and Management Staff
Office of Policy, Planning, and Preparedness

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

SUBJECT: 712(c)(2)(B) Conflict of Interest Waiver for S. Gail Eckhardt, M.D.

I am writing to request a waiver for S. Gail Eckhardt, M.D., a member of the Oncologic Drugs Advisory Committee, from the conflict of interest prohibitions of section 712(c)(2)(A) of the Federal Food, Drug, and Cosmetic Act. Waivers under section 712(c)(2)(B) may be granted by the appointing official where it is "necessary to afford the advisory committee essential expertise" and where the individual has made a disclosure to FDA of the financial interests at issue. We have determined that you are the appointing official for purposes of section712(c)(2)(B). Therefore, you have the authority to grant S. Gail Eckhardt, M.D. a waiver under section 712(c)(2)(B).

Section 712(c)(2)(A) prohibits Federal executive branch employees, including special Government employees, from participating in any particular matter in which the employee or an immediate family member has a financial interest that could be affected by the advice given to the FDA with respect to the matter. Because S. Gail Eckhardt, M.D. is a special Government employee, she is under a statutory obligation to refrain from participating in any deliberations that involve a particular matter having a direct and predictable effect on a financial interest attributable to her.

The function of the Oncologic Drugs Advisory Committee 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 cancer, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Eckhardt has been asked to participate in all official matters concerning supplemental BLA 125085/91, Avastin (bevacizumab), sponsored by Genentech, Inc., proposed indication, in combination with paclitaxel, for the treatment of patients who have not received chemotherapy for their locally recurrent or metastatic, HER2 negative breast cancer.

This matter is coming before the Oncologic Drugs Advisory Committee. This issue is a particular matter involving specific parties.

Dr. Eckhardt has advised the Food and Drug Administration (FDA) that she has a financial interest that could potentially be affected by her participation in the matter described above. Dr. Eckhardt is a consultant to ——— on unrelated issues. ———

As a member of the Oncologic Drugs Advisory Committee, Dr. Eckhardt could become involved in matters that could affect her financial interest. Under section 712(c)(2)(B), she is prohibited from participating in such matters. However, as noted above, you have the authority under section 712(c)(2)(B) to grant a waiver permitting Dr. Eckhardt to participate in such matters if necessary to afford these committees essential expertise.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to Dr. S. Gail Eckhardt that would allow her to participate fully in the matter described because her voting participation is necessary to afford the committee essential expertise.

According to the Division of Oncology Drug Products, the uniqueness of Dr. Eckhardt's qualifications justifies granting this waiver. A main focus of the meeting will be on the primary endpoint of the trial being used to support the resubmission of the supplemental BLA at hand as well a focus on data collection in this trial. Dr. Eckhardt's expertise in the science of clinical trial design and data interpretation will bring necessary expertise to a meeting of this type. Her experience in clinical trial research and developmental therapeutics, prior service as an Oncologic Drugs Advisory Committee (ODAC) member and as a special Government employee consultant to FDA on Phase 3 trial design issues, along with her status as a Medical Oncologist brings a wide range of knowledge to the committee.

The Division of Oncology Drug Products feels that because of the nature of the issues to be discussed it is imperative that the committee have a sufficient number of members with an expertise in Medical Oncology in order to have a meaningful discussion of the application under review. In an attempt to gain this necessary expertise, the Division along with the Advisors and Consultants Staff contacted 3 other committee members with Medical Oncology expertise. Two are able to attend and Dr. Eckhardt requires a waiver. Two more Medical Oncology experts were invited to the meeting but one was recused through conflict of interest screening and the other possibly less conflicted candidate declined to attend the meeting. However, Dr. Eckhardt's expertise differs in that she has experience in clinical trial research that will aid in the discussion of the trial being reviewed at this meeting.

Moreover, 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. I believe that participation by Dr. Eckhardt in the committee deliberations will contribute to the diversity of opinions and expertise represented on the committee.

Accordingly, I recommend that you grant S. Gail Eckhardt, M.D., a waiver that would allow her to participate in all official matters concerning supplemental BLA 125085/91, Avastin (bevacizumab), sponsored by Genentech, Inc., proposed indication, in combination with paclitaxel, for the treatment of patients who have not received chemotherapy for their locally recurrent or metastatic, HER2 negative breast cancer. I believe that such a waiver is appropriate because in this case, Dr. Eckhardt's voting participation is necessary to afford the committee essential expertise.

DECISION:

X Waiver granted based on my determination, made in accordance with section 712(c)(2)(B) of the Federal Food, Drug, and Cosmetic Act, that voting participation is necessary to afford the committee essential expertise.

____ Waiver granted based on my determination, made in accordance with section 712(c)(2)(B) of the Federal Food, Drug, and Cosmetic Act, that nonvoting participation is necessary to afford the committee essential expertise.

____ Waiver denied.

/S/ 11-15-07

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