



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

DATE: August 14, 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 Henry Black, M.D.

I am writing to request a waiver for Henry Black, M.D., a temporary voting 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. Black 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. Black 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. Black has been asked to participate in all official matters concerning clinical data for New Drug Application (NDA) 020-304, aprotinin injection (trade name, Trasylol), sponsored by Bayer Pharmaceuticals Corporation, a part of Bayer HealthCare AG, a subsidiary of Bayer AG. Trasylol is an approved product indicated for prophylactic use to reduce perioperative blood loss and the need for blood transfusion in patients undergoing cardiopulmonary bypass in the course of coronary artery bypass graft (CABG) surgery who are at increased risk for blood loss and blood transfusion. This discussion follows a September 27, 2006, FDA Public Health Advisory regarding a safety review of Trasylol (aprotinin injection).

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. Black has advised the Food and Drug Administration that he has a financial interest that could potentially be affected by his participation in the matter at issue. Dr. Black is a member of _____ speaker's bureau regarding an unrelated product, _____

_____. He receives minimal compensation for his role. _____, a division of _____, makes _____, a competing product to Trasylol.

As a temporary voting member of the Cardiovascular and Renal Drugs Advisory Committee, Dr. Black potentially could become involved in matters that could affect his financial interest. 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. Black 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. Black that would permit him to participate in the matter previously described.

First, it is important to consider that Dr. Black's interest in _____ is unrelated to the product at issue, the competing products, and issues coming before the committee.

Second, Dr. Black's financial interest in _____ is not so substantial as to preclude his participation in this meeting. He receives minimal compensation for serving on the speaker's bureau.

Third, the uniqueness of Dr. Black's expertise relevant to the issue to be discussed justifies granting this waiver. Dr. Black is the Associate Vice President for Research, the Associate Dean for Research, a Professor, and Chair for the Department of Preventative Medicine at Rush Medical College of Rush University. He is a board-certified nephrologist with three decades of experience in preventive cardiology. Dr. Black is an internationally known expert on hypertension, with special interests in the evaluation of antihypertensive medications, the study of secondary causes of hypertension and hypertension in the elderly. He has written extensively on secondary causes of hypertension, such as renovascular hypertension (i.e., hypertension due to narrowing of the blood vessels to the kidneys), preventive cardiology, and preventive medicine. Dr. Black is a key opinion-leader in preventive cardiology and hypertension, and sits on the editorial board of the *Journal of Hypertension* and the *Journal of Human Hypertension*. Dr. Black has extensive clinical trial experience and is intimately aware of the strengths and limitations of clinical studies. Dr. Black's participation is necessary for an appropriate

evaluation of the clinical data to determine whether Trasylol increases the risk for serious side effects, including kidney problems, heart attacks, and stroke. His participation would help ensure a thorough and balanced discussion, especially as it relates to patients with cardiovascular and kidney disease. Such a discussion is imperative because of the potential significant public health impact of the committees' recommendations and the Agency's subsequent action with respect to Trasylol.

Additionally, four nephrologists were invited to participate in this meeting. The discussion of aprotinin injection, especially in the kidney disease population is critical to a balanced discussion of the safety issues. The division has planned to have four nephrologists to participate in this meeting, as they each bring a unique perspective and expertise. Dr. Black is unique in his role as both a nephrologist and a pharmacologist with a combination of extensive experience in cardiology.

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. I believe Dr. Black's 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.

**APPEARS THIS WAY
ON ORIGINAL**

Accordingly, I recommend that you grant Henry Black, M.D., a waiver that will permit him to participate in all official matters concerning clinical data for New Drug Application (NDA) 020-304, aprotinin injection (trade name, Trasylol), sponsored by Bayer Pharmaceuticals Corporation, a part of Bayer HealthCare AG, a subsidiary of Bayer AG. I believe that such a waiver is appropriate because in this case, the need for the services of Dr. Black outweighs the potential for a conflict of interest created by the financial interest attributable to him.

CONCURRENCE: _____ /S/ _____
Vince Tolino
Director, Ethics and
Integrity Staff
Office of Management Programs
Office of Management

8/14/07
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/ _____
Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy
Food and Drug Administration

8/20/07
Date