DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

MEMORANDUM

DATE: June 26, 2007

TO: Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy

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 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 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 David Harrington, Ph.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. 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 concerning New Drug Application (NDA) 021,801, proposed trade name Orplatna (satraplatin capsules), originally developed by Johnson Matthey Pharmaceuticals, a subsidiary of Johnson Matthey PLC, with licensing rights to Spectrum Pharmaceuticals. Spectrum Pharmaceuticals licensed the global rights to GPC Biotech AG, proposed indication for the treatment of patients with androgen independent (hormone refractory) prostate cancer (HRPC) that has failed prior chemotherapy. This matter is coming before the Oncologic Drugs Advisory Committee for consideration and is characterized as a particular matter involving specific parties.

The functions of the Oncologic Drugs Advisory Committee, as stated in its Charter, are 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. Harrington has advised the Food and Drug Administration that his employer has a financial interest that could potentially be affected by his participation in the matter previously described. Dr. David 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, Dr. ———, in the division's Statistical Center has a pending contract with ——— to provide statistical analysis for a study of ——— in prostate cancer. The study will be funded indirectly by pharmaceutical companies through ——— or ———, a non-profit research foundation ———. Dr. Harrington's only involvement in this trial will be administrative. He will not receive any personal remuneration or salary support from the funds received. ——— is an approved competing product to Orplatna.

In addition, Dr. ——— also has pending studies with ——— that are unrelated to the issue to be discussed. Arguably, his interests do not constitute a financial interest in the matter under 18 U.S.C. § 208(a). Nevertheless, in the utmost of caution, I recommend that this wavier be granted.

As a member of the Oncologic Drugs Advisory Committee, Dr. Harrington potentially could become involved in matters that could affect his imputed 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. 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 Dr. David Harrington that would permit him to participate in the matter described previously.

First, although Dr. Harrington's employer currently has a financial interest in [redacted], he himself has no personal financial interest. 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 imputed financial interest is not so substantial as to preclude his participation in this matter. The funding proposed for this contract is nominal.

Moreover, Dr. David Harrington's expertise makes him an invaluable resource to FDA for this important meeting for the following reasons. Dr. Harrington is the only committee member with a primary background in statistical research in the treatment of cancer therapy. His participation is critical to the success of the meeting for this and the following reasons. This advisory committee will be considering data from studies of Orplatna for the treatment of hormone refractory androgen independent prostate cancer after failure of prior chemotherapy. Dr. Harrington is an academic statistician with a robust body of knowledge and experience in the design and conduct of clinical trials specific to cancer treatment. He has been involved in well-designed and well-executed clinical studies providing the best opportunity for the advancement of clinical research and its translation to the practice of evidence based medicine. Dr. Harrington is at the forefront of developments in clinical cancer research and clinical trial design. This is relevant to his participation and advice as an understanding of the adequacy of clinical trial design will be paramount to informing the discussion at this meeting.

The division feels strongly that Dr. Harrington has the background and expertise to lead an appropriate and stimulating discussion during the committee meeting, weighing the risks and benefits of approving Orplatna for the proposed use in the proposed population given the multivariant statistical issues surrounding the application.

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. David Harrington, Ph.D., 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. 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. Dr. Harrington's expertise in biostatistics and his vast experience as a cancer researcher will contribute to the diversity of opinions and expertise represented on the committee and will 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 would allow him to participate in all official matters concerning New Drug Application (NDA) 021,801, proposed trade name Orplatna (satraplatin capsules), originally developed by Johnson Matthey Pharmaceuticals, a subsidiary of Johnson Matthey PLC, with licensing rights to Spectrum Pharmaceuticals. Spectrum Pharmaceuticals licensed the global rights to GPC Biotech AG, proposed indication for the treatment of patients with androgen independent (hormone refractory) prostate cancer (HRPC) that has failed prior chemotherapy. I believe that such a waiver is appropriate because in this case, the need for the services of David Harrington, Ph.D., outweighs the potential for a conflict of interest created by the financial interest attributable to him.

CONCURRENCE: /S/ 6/27/07

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/ 6/27/07

Randall W. Lutter, Ph.D.
Deputy Commissioner for Policy
Date