

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 08- 1397 -CP
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Court address: Veterans Memorial Courthouse, 313 W. Kalamazoo, Lansing, MI 48901-7971
 Court telephone no.: (517) 483-6500

Plaintiff name(s), address(es), and telephone no(s).
MICHAEL A. COX, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan;

Plaintiff attorney, bar no., address, and telephone no.
 Suzanne Hassan (P67620)
 PO Box 30213
 Lansing, MI 48909
 517-335-0855

v

Defendant name(s), address(es), and telephone no(s).
 Pfizer Inc.
 C/O Shimica D. Gaskins (P69071) 202-662-5316
 Covington & Burling LLP

Attorney for Pfizer Inc.
 1201 Pennsylvania Avenue, NW
 Washington, DC 20004-2401

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). MCR 2.111(C)
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued OCT 22 2008	This summons expires JAN 21 2009	Court clerk MIKE ROWANTON
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*This summons is invalid unless served on or before its expiration date.
 This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Place where action arose or business conducted	

October 21, 2008
 Date

Suzanne Hassan
 Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

PROOF OF SERVICE

SUMMONS AND COMPLAINT

Case No. 08- -CP

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

OR

AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____
Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with the Complaint for Injunctive and Attachments
Other Relief, and Stipulated Final Judgment on October _____, 2008
Day, date, time

Signature _____ on behalf of Pfizer Inc.

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT
INGHAM COUNTY

MICHAEL A. COX, Attorney General of
the State of Michigan, *ex rel* STATE OF
MICHIGAN;

Plaintiff,

v

PFIZER INC.

Defendant.

Suzanne Hassan (P67620)
Assistant Attorney General
Consumer Protection Division
Michigan Department of Attorney General
P.O. Box 30213
Lansing, MI 48909
(517) 335-0855

Hon. WILLIAM E. COLLETTE

Case No. 08- 1397 -CP

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

1. Attorney General Michael A. Cox, on behalf of the State of Michigan, brings this civil action in the public interest against DEFENDANT PFIZER INC. for violating the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, as follows:

PARTIES

2. Plaintiff, the State of Michigan, represented by Attorney General Michael A. Cox, who brings this action in the public interest pursuant to the authority granted under MCL 445.905.
3. Defendant Pfizer Inc., ("Pfizer") is a Delaware corporation with its principal place of business in New York. At all relevant times, Pfizer did business in the State of

Michigan selling and promoting prescription drugs, including Bextra[®] and Celebrex[®]. In 2002, Pfizer purchased Pharmacia, a Delaware corporation, and merged the two companies' Bextra[®] and Celebrex[®] sales forces. Prior to this sale, the two companies' co-marketed Bextra[®] and Celebrex[®] and closely coordinated all promotional efforts. In addition for its own conduct marketing Bextra[®] and Celebrex[®], Defendant Pfizer is also responsible for Pharmacia's conduct. The conduct of both Pfizer and Pharmacia shall hereinafter be referred to collectively as conduct by DEFENDANT.

4. DEFENDANT at all relevant times has transacted business in the State of Michigan. The violations of law alleged herein have been and are being carried out within the State of Michigan.

JURISDICTION AND VENUE

5. This action for damages and injunctive relief is brought by the Attorney General in the name of the People of the State of Michigan for their use and benefit and is therefore properly brought in the Ingham County Circuit Court; MCL 600.1631, MCL 600.715, MCL 445.905(1).
6. Pursuant to MCL 445.905(1), the Attorney General is authorized to seek and obtain injunctive and other equitable relief to restrain Defendants' violations of the MCPA.
7. DEFENDANT agrees to waive notice as required by MCL 445.905(2).

SUMMARY OF THE ACTION

8. Attorney General Michael A. Cox brings this Complaint because DEFENDANT engaged in repeated unfair and deceptive acts, methods and practices with the purpose of achieving greater sales of Bextra[®] than it otherwise would have been able to achieve had they complied with the law. DEFENDANT achieved these sales in large part by misleading physicians and health professionals, consumers and others about the safety and efficacy of Bextra[®], and about the indications for which Bextra[®] was approved.
9. DEFENDANT'S unlawful marketing of Bextra[®] began in 2001 after the U.S. Food and Drug Administration ("FDA") declined to approve Bextra[®] for all of the uses and indications that DEFENDANT was counting on to make Bextra[®] a financial "blockbuster." Rather than simply marketing Bextra[®] for the more limited FDA-approved indications, DEFENDANT engaged in an aggressive, deceptive, and unlawful "off label" marketing campaign to increase sales of Bextra[®], a COX-2 inhibitor, to treat acute pain, perioperative pain and opioid sparing uses. These indications or uses for Bextra[®] are referred to as "off-label" uses because they have not been approved by the FDA. Bextra[®]'s FDA-approved "on-label" use is limited to 10 milligram doses for the treatment of pain associated with rheumatoid arthritis and osteo-arthritis and 20 milligram doses for pain associated with primary dysmenorrhea (menstrual pain).
10. As a part of it's "off-label" campaign, DEFENDANT misrepresented that Bextra[®] was a safe alternative to schedule 2 narcotics and traditional nonsteroidal anti-inflammatory ("NSAIDs") typically used in the treatment of acute and perioperative

pain, marketed Bextra[®] as reducing serious gastrointestinal side effects without possessing competent and reliable evidence to support this claim, and failed to disclose that Bextra[®] increased the risk of serious adverse events including death.

11. DEFENDANT also commissioned and disseminated hundreds of thousands of copies of positive studies relating to off-label uses of Bextra[®] without also providing negative studies; distributed hundreds of thousands of 20 milligram doses of Bextra[®] to medical professionals, such as orthopedic surgeons, who do not generally prescribe for menstrual pain, with the intent that the sample would be used off label; co-opted influential doctors to encourage off-label prescribing; provided meals and gifts to doctors who prescribed Bextra[®] off-label; promoted Continuing Medical Education (“CME”) classes that encouraged off-label uses; rewarded high off-label prescribers with paid “preceptorships” and consultancies; disseminated print advertisements with text and imagery that communicated Bextra[®]'s supposed efficacy against acute pain; and encouraged sales representatives to promote off-label uses in their sales calls. Instead of marketing Bextra[®] safely and responsibly, DEFENDANT was driven by their narrow desire to maximize profits.

STATEMENT OF FACTS

Cox-2 Painkillers Were Developed in a Lucrative Market.

12. NSAIDs such as naproxen (Aleve[®]) and ibuprofen (Advil[®]) have been widely prescribed for many years to treat the symptoms of arthritis as well as chronic and acute pain from other causes. NSAIDs are highly effective against pain and inflammation; however, they can cause gastrointestinal (“GI”) side effects, including

serious adverse events such as obstructions, bleeds, and perforations. These drugs are also sold over-the-counter ("OTC") at dosages lower than prescription strength. For the most part, NSAIDs are available generically and are thus significantly cheaper than branded COX-2 drugs.

13. NSAIDs work against pain and inflammation by inhibiting enzymes known as cyclo-oxygenase or COX. There are two forms of COX enzymes: COX-1 and COX-2. COX-1 is involved in the maintenance and repair of the GI system.
14. Selective COX-2 inhibitors ("COX-2 drugs") are drugs that block COX-2 without affecting COX-1. This class of drugs was developed in the 1990s in hope of reducing pain and inflammation without blocking COX-1's beneficial effect on the GI system; however, the scientific studies of COX-2 drugs have been inconclusive regarding gastrointestinal safety.
15. The scientific rationale and justification for COX-2 drugs was safety, not efficacy. No scientifically valid clinical trial has ever found COX-2 drugs to be more effective for treatment of pain and inflammation than traditional NSAIDs.
16. There are significant concerns that COX-2 drugs as a class may increase the risk of cardiovascular ("CV") adverse events such as stroke and heart attacks.
17. In total, three COX-2 drugs have been approved for sale in the United States: Celebrex[®] (celecoxib), Vioxx[®] (rofecoxib), and Bextra[®] (valdecoxib). DEFENDANT began marketing Celebrex[®] in early 1999 and Merck followed several months later with Vioxx[®]. In early 2002, DEFENDANT began marketing Bextra[®]. Ultimately, Vioxx[®] was withdrawn from the market in 2004; Bextra[®] was withdrawn

in 2005, and that same year, Celebrex[®] was given a "black box" warning on its label concerning CV risks associated with COX-2 drugs.

18. DEFENDANT competed vigorously with Merck for the rapidly expanding COX-2 market. DEFENDANT'S sales representatives were paid significant bonuses to get doctors to switch patients from Vioxx[®] to Celebrex[®] or Bextra[®].
19. Celebrex[®] was disadvantaged in its competition with Vioxx[®] because unlike Vioxx[®], Celebrex[®] was not initially approved for the treatment of acute pain. Although eventually Celebrex[®] was approved for this indication, the late approval impaired Celebrex[®]'s ability to compete in the acute pain market and many doctors considered Celebrex[®] less effective against acute pain.

Defendant Developed Bextra[®] to Be a "Blockbuster" Painkiller but Studies Revealed Safety Concerns.

20. DEFENDANT planned to "create the next [COX-2] blockbuster" by marketing Bextra[®] as a "powerful agent" for both acute and chronic pain with strength equal to that of a schedule 2 narcotic. Bextra[®]'s initial product profile identified acute pain, opioid sparing, and preemptive analgesia associated with the treatment of surgical pain as Bextra[®]'s distinguishing qualities. By focusing on these qualities, DEFENDANT sought to supplement Celebrex[®]'s perceived weaknesses against acute pain with Bextra[®]'s strength and prevent Bextra[®] from cannibalizing Celebrex[®] sales. Bextra[®] would primarily target young active patients with acute pain while Celebrex[®] would primarily target older patients with chronic pain (e.g. – pain associated with arthritis). Bextra[®] would compete directly against Vioxx[®] in the acute pain market

while Celebrex[®] would compete primarily against traditional NSAIDs including OTC drugs, for chronic pain.

21. On November 27, 2001, the FDA approved the 10mg dose Bextra[®] for the treatment of pain associated with rheumatoid arthritis and osteo-arthritis and the 20 milligram dose for pain associated with primary dysmenorrhea, but expressly rejected Bextra[®]'s use at any dose for acute and perioperative pain and opioid sparing indications. The FDA rejected Bextra[®] for those uses primarily because the Coronary Artery Bypass Graft Study 035 ("CABG I") demonstrated an excess of serious adverse events including death in association with Bextra[®] and Bextra[®]'s pro-drug, paracoxib.
22. CABG I was a randomized, double-blind comparison of two groups of patients who underwent coronary artery bypass graft surgery. One group in the study received Bextra[®] and paracoxib, along with narcotics, to treat perioperative pain. The other group only received narcotics (also known as the "standard of care"). DEFENDANT'S goal for CABG I was to demonstrate that Bextra[®] was safe and effective to treat surgical pain and reduce the incidence of narcotic related adverse events such as nausea, constipation, and somnambulence. The results of the CABG I study, however, showed that although patients given Bextra[®] used fewer narcotics, there was no reduction in narcotic related side effects. Further, patients given Bextra[®] suffered twice as many Serious Adverse Events ("SAEs") compared to patients who did not receive Bextra[®].
23. To minimize the safety concerns raised by CABG I, DEFENDANT compared Bextra[®]'s SAE rate with observational reports outside the study and claimed that Bextra[®]'s SAE rate was within normal limits. This substitution of an after the fact

control group data is scientifically dishonest and contrary to generally accepted scientific methods. DEFENDANT attempted to further minimize the negative results of CABG I by claiming there was a "failure of randomization" that caused weaker patients to be placed in the Bextra[®] test group.

24. In addition, in an attempt to frame the negative CABG I results as a fluke, on or about January 28, 2003, DEFENDANT began a second clinical trial relating to Bextra[®] and CABG surgery. The "CABG II" study compared three similarly sized groups: patients who received narcotics; patients who received narcotics plus Bextra[®]; and patients who received narcotics, Bextra[®], and paracoxib.
25. DEFENDANT enrolled patients into their CABG II study without disclosing to them that their counterparts in CABG I experienced a doubling of SAEs. Rather, the increased SAE rate was minimized and potential subjects were told that side effects in CABG I were within the expected number of side effects typically seen in CABG surgeries.
26. CABG II confirmed the risk of high dose Bextra[®] for post-operative pain relief: patients who received Bextra[®] experienced significantly more heart attacks and other cardiovascular problems compared to patients who did not receive Bextra[®].
27. CABG II combined with CABG I raised significant concerns about the safety of Bextra[®] for all patients, even at low doses. Nonetheless, DEFENDANT continued to promote high dose Bextra[®] for acute pain and peri-operative uses.
28. In November 2004, the FDA required DEFENDANT to disclose the negative SAE data results of both CABG studies in a revised package insert for Bextra[®].

29. Nonetheless, beginning in 2001 after the FDA denial of certain indications and despite clear evidence of risks associated with high dosing of Bextra[®], DEFENDANT proceeded with its original marketing plan to market Bextra[®] for the now FDA-disapproved indications of acute, perioperative pain, and opioid sparing indications.

Defendant Created and Distributed Biased Science and Unfair and Imbalanced Information.

30. As part of their illegal marketing efforts, DEFENDANT unlawfully distributed and discussed many studies that described off-label indications. Notwithstanding official and legal admonitions against using off-label studies for marketing efforts, DEFENDANT disseminated hundreds of thousands of clinical studies that supported using Bextra[®] for acute and perioperative pain and opioid sparing use for the purpose of promoting Bextra[®] for off-label use. Additionally, DEFENDANT did not comply with requirements to balance favorable information by the equal distribution of relevant unfavorable studies, and DEFENDANT did not disclose the negative results from the CABG studies or the FDA's rejection of Bextra[®] for acute, perioperative pain and opioid sparing indications.

31. DEFENDANT disseminated hundreds of thousands of copies of an article entitled "Valdecoxib, a COX-2 -- Specific Inhibitor, Is an Efficacious Opioid-Sparing Analgesic in Patients Undergoing Hip Arthroplasty," by Frederic Camu, M.D. ("Camu"), which was published in the American Journal of Therapeutics in 2002. DEFENDANT distributed the Camu study to orthopedic surgeons, anesthesiologists, and other surgical specialists knowing these specialists would be prescribing Bextra[®] off-label for perioperative pain and opioid sparing.

32. DEFENDANT distributed hundreds of thousands of copies of an article entitled "Valdecoxib Does Not Impair Platelet Function," by Philip T. Leese, M.D. ("Leese"), which was published in the Journal of Emergency Medicine in 2002. DEFENDANT distributed the Leese article as proof that Bextra[®] could be used for perioperative pain without causing increased bleeding after surgery.
33. DEFENDANT also distributed hundreds of thousands of copies of an article entitled "The Analgesic Efficacy of Valdecoxib Versus. Oxycodone/Acetaminophen after Oral Surgery," by Stephen E. Daniels, D.O. ("Daniels"), which was published in the Journal of the American Dental Association (JADA) in 2002. DEFENDANT commissioned the Daniels study as part of a strategy to create and disseminate medical studies that supported prescribing Bextra[®] for perioperative pain and opioid sparing use. The Daniels study was not conducted by a mainstream academic organization; rather DEFENDANT hired SCIREX, a contract research organization owned by a large advertising company, and hired by DEFENDANT. The Daniels study was designed to produce misleading study results because it compared Bextra[®] to a single dose of a medicine that is usually given in multiple doses. Although the Daniels study was published by Journal of the American Dental Association ("JADA"), one of the journal's editors later explained that they were not told that Bextra[®] was disapproved for the treatment of acute pain. Had JADA's editors known the truth, the Daniels study would not have been published.
34. DEFENDANT widely disseminated the Camu, Leese, and Daniels studies to its sales representatives, urged them to distribute the articles on their sales calls, and provided them with discussion notes that enabled sales representatives to discuss these off-

label studies during their sales calls. Although the materials DEFENDANT produced for sales representatives often contained a "do not detail" advisement cautioning against any discussion of the studies during sales calls, the warning was illusory and widely ignored.

35. DEFENDANT also attempted to hire influential medical professionals to present the results of these studies in order to give a false appearance of reliability to DEFENDANT own self-generated and financed study results.
36. In 2003, the Journal of Thoracic and Cardiac Surgery published CABG I as an article entitled "Efficacy and Safety of the Cyclooxygenase 2 Inhibitors Parecoxib and Valdecoxib in Patients Undergoing Coronary Artery Bypass Surgery" by Elisabeth Ott, M.D. ("Ott"). This article raised important concerns about the safety of high dose Bextra[®] for treatment of acute and perioperative pain and for opioid sparing uses, and suggested the need for a comprehensive evaluation of a large-scale trial before using Bextra[®] to treat vulnerable patients. DEFENDANT promoted Bextra[®] for acute and perioperative pain and opioid sparing uses yet failed to disclose this article to the medical community and did not approve it for distribution by sales representatives.
37. DEFENDANT also promoted off-label uses of Bextra[®] in medical inquiry response letters. FDA regulations permit drug manufacturers to provide off-label information in response to an unsolicited inquiry from a medical professional so long as the responsive material contains balanced information and is not promotional. Similar to its strategy of distributing only favorable off-label medical articles, DEFENDANT disclosed only favorable data about acute and perioperative pain and opioid sparing

indications in their responses to medical inquiries and omitted negative CABG I results and the FDA denials.

Defendant Improperly Distributed Free Samples of Bextra® with the Intent to Have Samples Used for Off-label Indications.

38. DEFENDANT promoted off-label use of Bextra® to treat acute and perioperative pain and opioid sparing by giving hundreds of thousands of 20 milligram Bextra® samples to surgeons, anesthesiologists, and other surgical and pain specialists who do not customarily treat severe menstrual cramps, but who do treat acute and peri-operative pain. DEFENDANT intended for medical specialists to use the 20 milligram samples to treat acute and perioperative pain and for opioid sparing use but failed to disclose the negative results from the CABG I and CABG II studies and failed to disclose that FDA had rejected these indications due to concerns about their safety.

Defendant Employed an Enormous Sales Staff to Market Bextra® for Off-Label Uses.

39. DEFENDANT relied heavily on their enormous sales staff to market Bextra® for off-label and FDA-denied indications. DEFENDANT produced deceptive sales messages that promoted Bextra® for acute and perioperative pain and opioid sparing and trained sales representatives to effectively use this messaging to increase off-label sales. Sales representatives promoted Bextra®'s off-label indications to health care providers and were encouraged to detail health care providers extensively about these FDA-denied indications.

40. Sales managers carefully tracked sales representatives' success in conveying DEFENDANT'S messages by monitoring electronic call notes submitted by sales

representatives and accompanying them on sales calls. DEFENDANT also knew that sales representatives were detailing Bextra[®] for acute and perioperative pain based on surveys conducted by consultants hired by DEFENDANT to track and monitor prescribing information.

41. DEFENDANT sought to increase Bextra[®] sales for acute and perioperative pain and opioid sparing by aggressively targeting surgeons, surgery centers, and hospitals to get Bextra[®] placed on “standing orders” and “protocols” for these indications. Surgery centers and hospitals rely on standing orders and protocols for analgesic dosing regimes associated with perioperative pain. DEFENDANT’S success in placing Bextra[®] on surgical standing orders directly increased Bextra[®] sales, served as a powerful tool for promoting Bextra[®] to other doctors and hospitals, and increased the likelihood that surgical patients would remain on Bextra[®] to treat chronic pain conditions after surgery.

42. DEFENDANT also obtained examples of surgical protocols and standing orders that included analgesic dosing regimes for Bextra[®] and disseminated these samples to sales representatives. DEFENDANT held contests and rewarded sales representatives with recognition, accolades, and cash equivalent prizes for obtaining high volume standing order sales.

Defendant Engaged in Off-Label Advertising to Consumers and Providers Using the Pretense of Education.

43. Physician education programs were another integral part of DEFENDANT’S scheme to promote Bextra[®] for acute and perioperative pain and opioid sparing indications. DEFENDANT hired surgeons, anesthesiologists, and other pain specialists to conduct

physician education programs ranging from informal luncheon presentations to Continuing Medical Education programs. DEFENDANT knew off-label topics would be discussed at these programs and provided speakers with presentation slides containing favorable off-label data and information about Bextra[®].

44. DEFENDANT'S market research indicated that more patients suffered from non-arthritis pain than arthritis pain. To reach beyond the arthritis pain market, DEFENDANT developed and widely used marketing materials that promoted Bextra[®] to treat acute pain caused by sprains, strains, tendonitis, and bursitis. To avoid the appearance of off-label marketing, however, DEFENDANT'S sales messages used euphemisms for acute pain such as "tough pain," "flare pain," "acute pain condition," and "episodic pain" and visual imagery that evoked strong and powerful pain relief.
45. DEFENDANT also used patient-type marketing to enhance its acute pain message for Bextra[®]. Throughout its marketing campaign, DEFENDANT consistently targeted the young active "weekend warrior" patient with tough episodic pain for Bextra[®]. In contrast, and to distinguish the target market for Celebrex[®], DEFENDANT promoted Celebrex[®] for the older patient suffering from chronic pain.
46. DEFENDANT'S marketing surveys, focus groups, and feedback from its field sales force confirmed that doctors consistently perceived Bextra[®]'s strong powerful pain relief messaging as targeting the acute pain market.
47. DEFENDANT also promoted its "weekend warrior" imagery in its direct-to-consumer advertising. DEFENDANT distributed hundreds of thousands of copies of a self-published periodical called *Perform Magazine* that contained multiple images and

messages promoting Bextra[®]'s strong powerful pain relief. *Perform Magazine* was sent to subscribers of *People* magazine and widely distributed in patient waiting rooms.

48. DEFENDANT invited surgeons and other pain specialists who were likely to prescribe Bextra[®] off-label to so-called "consultant" meetings. Although DEFENDANT claimed these meetings were not promotional, they conducted return on investment analysis on some attendees to determine whether there was a sufficient increase in prescriptions to financially justify the costs of the meetings.

Defendant Gave Improper Inducements, Payments, and Gifts to Physicians.

49. To illegally promote Bextra[®] off-label from within the medical community, DEFENDANT also hired surgeons, podiatrists, anesthesiologists, and other specialties to conduct Bextra[®] off-label dinner talks and round tables. DEFENDANT sought out and developed physician speakers who were high prescribers of Bextra[®] and supported its off-label use – these health care providers were then paid to give lunch or dinner talks relating to off-label use of Bextra[®].
50. DEFENDANT maintained a stable of recommended and paid physician-speakers that sales staff could use for off-label Bextra[®] dinner talks. Sales staff often worked with physicians on their presentations, and encouraged health care providers to talk about off-label uses, even though this practice is prohibited. Talks were conducted at expensive top flight restaurants. DEFENDANT conducted analyses on physicians to confirm that their prescribing behavior increased after speaking or after attending dinner programs.

51. DEFENDANT rewarded doctors who were high off-label prescribers of Bextra[®] with "preceptorships" in which the doctor was paid up to \$500 to allow Bextra[®] sales representatives to follow him or her around on clinical rounds and attend surgeries.
52. DEFENDANT used preceptorships to gain access to doctors who otherwise would not allow sales representatives to visit their office. During the preceptorship, the sales representatives were encouraged to discuss using Bextra[®] to treat acute and perioperative pain.
53. DEFENDANT also cultivated off-label Bextra[®] prescribers by rewarding certain prescribers with clinical research grants and contracts.
54. In addition to gifts to prescribers, DEFENDANT provided grants to certain medical centers and hospitals and leveraged the resultant "goodwill" to promote off-label use of Bextra[®].

To Enhance Its Unlawful Marketing Campaign, Defendant Concealed and Misrepresented Bextra[®]'s Safety and Risks.

55. As DEFENDANT marketed Bextra[®] to more health care providers, for more patients, and for a wider assortment of illnesses and pain types, DEFENDANT consistently avoided, minimized, and failed to disclose material health and safety risks. DEFENDANT deceptively marketed Bextra[®] as the most powerful non-narcotic medication without clinically reliable evidence for such a claim, and while omitting important information that showed Bextra[®] was no better and potentially more dangerous than traditional NSAIDs in treating pain.
56. DEFENDANT'S decision to minimize or fail to disclose the results from CABG I, the study which was the basis for the FDA's denial of Bextra[®] for acute pain prevented

doctors from fully educating themselves about Bextra[®] and created a dangerous situation where health care providers were prescribing a drug without knowing all of the risks.

57. DEFENDANT also deceptively promoted Bextra[®]'s gastrointestinal safety in brochures mailed directly to consumers. Although Bextra[®]'s FDA approval label cautioned that Bextra[®] could cause serious and life-threatening gastrointestinal side effects, including bleeding in the stomach and intestines, DEFENDANT'S direct to consumer brochures misrepresented that, for patients who take Bextra[®], the "stomach stays protected." DEFENDANT ran a similarly deceptive advertisement in *Perform Magazine*.

58. DEFENDANT'S sales staff told health care providers that Bextra[®] was safe and effective, without affirmatively explaining side effects or adverse events. DEFENDANT'S sales executives specifically told sales staff *not* to initiate discussion of Bextra[®] safety.

59. DEFENDANT also attempted to confuse health care providers to believe positive Celebrex[®] data also applied to Bextra[®]. DEFENDANT promoted both Bextra[®] and Celebrex[®] at the same time and their marketing materials and representations intentionally conflated research data so that Celebrex[®] studies were used to explain the safety and efficacy of Bextra[®], even though Celebrex[®] was a different drug and approved for different indications.

DEFENDANT'S Unlawful Marketing Scheme Had a Powerful Effect.

60. DEFENDANT'S promotional scheme for Bextra[®] was highly successful. Total Bextra[®] sales approached four billion dollars, most of which were for acute and perioperative pain and opioid sparing indications, and not for the 10 milligram dose treatment of pain associated with rheumatoid arthritis and osteo-arthritis and the 20 milligram dose treatment for pain associated with primary dysmenorrhea.

**CAUSE OF ACTION AGAINST DEFENDANT FOR
VIOLATIONS OF THE MICHIGAN CONSUMER PROTECTION ACT (MCL
445.901 *et seq.*)**

61. Paragraphs 1-60 of this complaint are incorporated herein as though set forth in full. MCL 445.905 authorizes the Attorney General to bring an action to enjoin a defendant from engaging in a method, act, or practice that is in violation of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*.
62. By engaging in the acts and practices described above, DEFENDANT has engaged unfair or deceptive acts and practices in violation of MCL 445.903 by misrepresenting the characteristics, uses, benefits, and qualities of Bextra[®]. Namely, DEFENDANT violated MCL 445.903 by:
- a) promoting Bextra[®] off-label for acute pain, post surgery analgesia, and opioid sparing without disclosing that the FDA rejected DEFENDANT'S application to promote for these indications;
 - b) promoting Bextra[®] 20mg off-label as safe and effective for conditions other than primary dysmenorrhea;

- c) misrepresenting the safety and efficacy of Bextra for treatment of acute pain, post surgery analgesia, and opioid sparing use;
- d) misrepresenting the gastrointestinal safety of Bextra®; and
- e) conflating information to mislead doctors to believe that positive information about one drug also applied to the other.

63. DEFENDANT engaged in acts and practices described above when it knew, or should have known, that its conduct was unfair or deceptive in violation of MCL 445.903.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully requests that this Court:

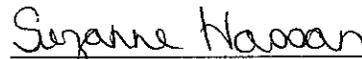
- A. Adjudge and decree that DEFENDANT engaged in acts or practices in violation of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, as previously set forth;
- B. Permanently enjoin and restrain the DEFENDANT from engaging in deceptive and unfair practices set forth herein and from violating the Michigan Consumer Protection Act, MCL 445.901 *et seq.*;
- C. Adjudge and decree that the DEFENDANT is liable to the State for Michigan for the reasonable costs and expenses of the investigation and prosecution of the DEFENDANT'S actions, including attorneys' fees;
- D. Assess, fine, and impose upon DEFENDANT a civil penalty pursuant to MCL 445.905(1) of \$25,000 for each persistent and knowing violation of MCL 445.903 alleged herein;

E. Grant Plaintiff such other and further relief as this Court deems just, equitable,
and appropriate.

Dated: October 21, 2008

Respectfully Submitted,

MICHAEL A. COX
Michigan Attorney General



SUZANNE HASSAN (P67620)
Assistant Attorney General
Consumer Protection Division
Michigan Department of Attorney General
P.O. Box 30213
Lansing, Michigan 48909
(517) 335-0855
Fax: (517) 335-1935

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT
INGHAM COUNTY

MICHAEL A. COX, Attorney General of
the State of Michigan, *ex rel* STATE OF
MICHIGAN,

Plaintiff,

v

Hon. WILLIAM E. COLLETTE

Case No. 08-1397 -CP

PFIZER INC

Defendant.

Suzanne Hassan (P67620)
Assistant Attorney General
Consumer Protection Division
Michigan Department of Attorney General
P.O. Box 30213
Lansing, MI 48909
(517) 335-0855

**CONSENT JUDGMENT BETWEEN PFIZER INC ("PFIZER") AND THE
ATTORNEYS GENERAL OF THE STATES OF ALASKA, ARIZONA, ARKANSAS,
CALIFORNIA, CONNECTICUT, FLORIDA, DISTRICT OF COLUMBIA, IDAHO,
ILLINOIS, IOWA, KANSAS, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO,
NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OREGON,
PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS,
VERMONT, WASHINGTON, AND WISCONSIN.**

The parties voluntarily enter in this Consent Judgment on the terms and conditions set
forth below:

CONSENT JUDGMENT

1.

Definitions:

- a. "Covered Conduct" shall mean Pfizer's promotional and marketing practices regarding the prescription drugs Celebrex® and Bextra®, that were the subject of an investigation by the Signatory Attorneys General under the State Consumer Protection Laws.
- b. "Effective Date" shall mean the date by which Pfizer and ninety percent (90%) of the States that comprise the Multistate Working Group have executed the Consent Judgment.
- c. "FDA Amendments Act of 2007" (or "FDA Amendments Act" or "the Act") shall mean Public Law No. 110-85, which among other things, creates a federal clinical trial registry and results data bank.
- d. "FDA's Guidance for Industry" shall mean documents published by the United States Department of Health and Human Services, Food and Drug Administration (FDA), that represent the FDA's current recommendations on a topic.
- e. "Individual States" and "State" shall mean each Signatory Attorney General who is participating in the Multistate Working Group.
- f. "Pfizer" shall mean Pfizer Inc and its United States-based affiliates, subsidiaries, predecessors, successors, and assigns.
- g. "Multistate Executive Committee" shall mean the Attorneys General and their staffs representing Arizona, California, Florida, Illinois, Massachusetts, New York, Ohio, Oregon, Texas, and Vermont.
- h. "Multistate Working Group" ("MSWG") shall mean the Attorneys General and their staffs representing Alaska, Arizona, Arkansas, California, Connecticut, Florida, District of Columbia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan,

Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, and Wisconsin.

i. "Off-Label" shall mean related to an indication that was not approved by the FDA at the time of dissemination or relating to information that was not contained in the FDA label.

j. "Prescriber" shall mean any physician, dentist, physician assistant, nurse practitioners, and all others with legal authority to prescribe any Pfizer product, as well as pharmacists, members of Pharmacy & Therapeutics committees and others who potentially have an impact on the prescribing of any Pfizer product.

k. "Parties" shall mean Pfizer and the Individual States.

l. "Product" shall mean any prescription drug or biological product manufactured, distributed, sold, marketed or promoted in the United States in any way.

m. "Signatory Attorney(s) General" shall mean the Attorney General, or his or her designee, of each state in the Multistate Working Group.

n. "State Consumer Protection Laws" shall mean the consumer protection laws under which the Signatory Attorneys General have conducted their investigation.¹

¹ The States' consumer protection statutes are: ALASKA - *Unfair Trade Practices and Consumer Protection Act*, AS 45.50.471 *et seq.*; ARIZONA - *Consumer Fraud Act*, A.R.S. § 44-1521 *et seq.*; ARKANSAS - Ark. Code Ann. § 4-88-101 *et seq.*; CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq.* and 17500 *et seq.*; CONNECTICUT - Conn. Gen. Stat. §§ 42-110a *et seq.*; DISTRICT OF COLUMBIA - *Consumer Protection Procedures Act*, D.C. Code § 28-3901 *et seq.*; FLORIDA - *Deceptive and Unfair Trade Practices Act*, Fla. Stat. Ch. 501.201 *et seq.*; IDAHO - *Consumer Protection Act*, Idaho Code Section § 48-601 *et seq.*; ILLINOIS - *Consumer Fraud and Deceptive Business Practices Act*, 815 ILCS § 505/1 *et seq.* (2006 State Bar Edition); IOWA - *Iowa Consumer Fraud Act*, Iowa Code Section 714.16; KANSAS - *Consumer Protection Act*, K.S.A. 50-623 *et seq.*; KENTUCKY - *Consumer Protection Statute*, KRS 367.110 *et seq.*; MAINE - *Unfair Trade Practices Act*, 5 M.R.S.A. § 207 *et seq.*; MARYLAND -

- o. "Celebrex" shall mean celecoxib.
- p. "Bextra" shall mean valdecoxib.

2.

The parties have agreed to resolve the issues raised by the Covered Conduct by entering into this Consent Judgment (hereinafter "Judgment").

(a) Pfizer is entering into this Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Pfizer expressly denies. Pfizer does not admit any violation of the State Consumer Protection Laws set forth in footnote 1, and does not admit any wrongdoing that was or could have been alleged by any Attorney General before the date of the Judgment under those laws. No part of this Judgment, including its statements and commitments, shall constitute

Consumer Protection Act, Md. Code Ann., Com. Law § 13-101 *et seq.*; MASSACHUSETTS - *Consumer Protection Act*, M.G.L. c. 93A *et seq.*; MICHIGAN - *Michigan Consumer Protection Act*, MCL 445.901 *et seq.*; MONTANA - Mont. Code Ann. § 30-14-101 *et seq.*; NEBRASKA - *Uniform Deceptive Trade Practices Act*, NRS § 87-301 *et seq.*; NEW JERSEY - *New Jersey Consumer Fraud Act*, 56:8-1 *et seq.*; NEW YORK - General Business Law Article 22-A Sections 349, 350 and Executive Law Section 63 (12); NEW MEXICO - *Unfair Practices Act*, NMSA 1978, § 57-12-1 *et seq.*; NEVADA - *Deceptive Trade Practices Act*, Nevada Revised Statutes 598.0903 *et seq.*; NORTH CAROLINA - *Unfair and Deceptive Trade Practices Act*, N.C. Gen. Stat. § 75-1.1 *et seq.*; NORTH DAKOTA - *Unlawful Sales or Advertising Practices*, N.D. Cent. Code. § 51-15-02 *et seq.*; OHIO - *Consumer Sales Practices Act*, R.C. 1345.01 *et seq.*; OREGON - *Unlawful Trade Practices Act*, ORS 646.605 to 646.656; PENNSYLVANIA - *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1 *et seq.*; SOUTH CAROLINA - *Unfair Trade Practices Act*, S.C. CODE. ANN. Sections 39-5-10 *et seq.*; SOUTH DAKOTA - *Deceptive Trade Practices Act*, S.D. Codified Laws § 37-24 *et seq.*; TENNESSEE - *Consumer Protection Act*, Tenn. Code Ann. §§ 47-18-101 *et seq.*; TEXAS - *Deceptive Trade Practices - Consumer Protection Act*, Tex. Bus. and Com. Code § 17.47 *et seq.*; VERMONT - *Consumer Fraud Act*, 9 V.S.A. § 2451 *et seq.*; WASHINGTON - *Unfair Business Practices/Consumer Protection Act*, R.C.W. 19.86 *et seq.*; WISCONSIN - Wis. Stat. § 100.18 *et seq.* (Fraudulent Representations) and Wis. Stat. § 100.182 *et seq.* (Fraudulent Drug Advertising).

evidence of any liability, fault, or wrongdoing by Pfizer. This document and its contents are not intended for use by any third party for any purpose, including submission to any court for any purpose.

(b) This Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Pfizer in any action, or of Pfizer's right to defend itself from, or make any arguments in, any private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Judgment. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, a State may file an action to enforce the terms of this Judgment.

(c) It is the intent of the Parties that this Judgment not be admissible in other cases or binding on Pfizer in any respect other than in connection with the enforcement of this Judgment.

(d) No part of this Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that a State may file an action to enforce the terms of this Judgment.

(e) All obligations undertaken by Pfizer in this Judgment shall apply prospectively, except to the extent permitted by the National Library of Medicine, Pfizer shall submit, as soon as practicable, clinical trial results to the clinical trial registry and results data bank created by the FDA Amendments Act for all "applicable clinical trials" (as that term is defined by the Act) of FDA-approved Pfizer Products that were initiated after July 1, 2005.

3.

Pfizer shall register clinical trials and submit results to the registry and results data bank as required by the FDA Amendments Act and any accompanying regulations that may be promulgated pursuant to that Act.

4.

Pfizer shall not make any written or oral claim that is false, misleading or deceptive regarding any FDA-approved Pfizer Product.

5.

Pfizer shall not make any written or oral promotional claims of safety or effectiveness for any FDA-approved Pfizer Product in a manner that violates the Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq. ("FDCA"), accompanying regulations, or voluntary agreements with FDA, as interpreted by the FDA in a writing by the Director of the Center for Drug Evaluation at the FDA.

6.

Nothing in this Judgment shall require Pfizer to:

- (a) take an action that is prohibited by the FDCA or any regulation promulgated thereunder, or by FDA; or
- (b) fail to take an action that is required by the FDCA or any regulation promulgated thereunder, or by FDA. Any written or oral promotional claim subject to this Judgment which is the same, or materially the same, as the language required or agreed to by the Director of Division of Drug Marketing, Advertising and Communication or the Director of the Center for Drug Evaluation and Research or their authorized designees in writing shall not constitute a violation of this Judgment.

7.

Following the initial approval of any Pfizer Product indicated for pain relief, Pfizer shall delay direct to consumer ("DTC") television advertising that relates to such indication, if the Director of the Center for Drug Evaluation and Research at FDA recommends such a delay in writing to Pfizer. Pfizer's delay shall be for the same period as recommended by the Director of the Center for Drug Evaluation and Research at FDA, but in no event shall the period of delay required by this provision of this Judgment exceed 18 months from approval. Should Pfizer run television DTC advertising contrary to a recommendation from the Director of the Center for Drug Evaluation and Research after the expiration of this 18 month period, Pfizer shall provide written notice to the Multistate Executive Committee 30 days prior to running the subject advertisement and shall also provide a copy of all correspondence with FDA relating to the subject advertisement.

8.

Pfizer agrees to submit all new DTC television advertising campaigns for any Pfizer Product to FDA for pre-review, to wait a reasonable time (not less than 45 days) until Pfizer receives a response from FDA prior to running the advertising campaign, and to modify such advertising consistent with any written comments from FDA, whenever received. Simultaneous with running any new DTC television advertisement for which FDA has not provided Pfizer with a pre-review response addressing the substance of the advertisement within the 45-day waiting period prescribed herein, Pfizer shall provide written notice to the Multistate Executive Committee that Pfizer is running the advertisement and that the FDA has not provided Pfizer with a pre-review response addressing the substance of the advertising within the 45-day waiting period, and also provide a copy of all material submitted to FDA for the review of the subject advertisement.

9.

Pfizer's obligations with respect to Paragraph 7 shall remain in effect for eight years following the Effective Date. Pfizer's obligations with respect to Paragraph 8 shall remain in effect for seven years following the Effective Date. With respect to Paragraph 7, Pfizer shall abide by any such written recommendation so long as the submission of the TV advertising campaign is made within eight years following the Effective Date. With respect to Paragraph 8, Pfizer shall abide by any such written recommendation so long as the submission of the TV advertising campaign is made within seven years of the Effective Date.

10.

When presenting information in detailing pieces, brochures, booklets, mailing pieces, published journals, magazines, other periodicals and newspapers, and broadcast through media such as radio, television, the Internet, and telephone communications systems, about a Clinical Study that relates to an FDA-approved Pfizer Product, Pfizer shall: (a) accurately reflect the methodology used to conduct the Clinical Study; (b) not present favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for such information or conclusions; and (c) not use statistical analyses and techniques on a retrospective basis to discover and cite findings not soundly supported by the study, or to suggest scientific validity and rigor for data from studies the design or protocol of which are not amenable to formal statistical evaluations.

11.

When presenting information in detailing pieces, brochures, booklets, mailing pieces, published journals, magazines, other periodicals and newspapers, and broadcast through media such as radio, television, the Internet, and telephone communications systems, about a Clinical Study or analysis of Clinical Studies as evidence of an FDA-approved Pfizer Product's safety, Pfizer shall not: (a) present information from a study in a way that implies that the study represents larger or more general experience with the drug than it actually does; or (b) use statistics on numbers of patients, or counts of favorable results or side effects derived from pooling data from various insignificant or dissimilar studies in a way that suggests either that such statistics are valid if they are not or that they are derived from large or significant studies supporting favorable conclusions when such is not the case.

12.

When presenting information in detailing pieces, brochures, booklets, mailing pieces, published journals, magazines, other periodicals and newspapers, and broadcast through media such as radio, television, the Internet, and telephone communications systems, about a Clinical Study or analysis of Clinical Studies as evidence of an FDA-approved Pfizer Product's safety, Pfizer shall not: (a) present favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for such information or conclusions; (b) use the concept of statistical significance to support a claim that has not been demonstrated to have clinical significance or validity, or fails to reveal the range of variations around the quoted average results; or (c) use statistical analyses and techniques on a retrospective basis to discover and cite findings not soundly supported by the study, or to suggest scientific validity and rigor for data from studies the design or protocol of which are not amenable to formal statistical evaluation.

13.

(a) Pfizer shall comply with the ACCME Standards for Commercial Support (a copy of the current version is attached hereto as Appendix 1).

(b) Any person who acts in a promotional capacity for Pfizer with respect to an FDA approved Pfizer Product shall be obligated under his or her contract with Pfizer, as a condition for any future promotional relationship with Pfizer, to disclose to Continuing Medical Education ("CME") participants orally and to the CME provider for inclusion in the written materials the existence, nature and purpose of his or her arrangement with Pfizer when a member of the faculty at a CME program if: (i) the Product the faculty member promoted for Pfizer is in the same therapeutic category as the subject of the CME program, and (ii) the CME program occurs within 12 months of the faculty member performing work for or receiving compensation from Pfizer. Such disclosure shall set forth the type of promotional work engaged in by the faculty member and the name of the therapeutic category with respect to such promotion.

(c) Pfizer shall not provide funding for CME when Pfizer has knowledge at the time the decision to fund the CME is made that a speaker at the CME has also been a promotional speaker in the past 12 months at a Pfizer-sponsored promotional event related to the class of drugs to be discussed in the CME.

14.

Pfizer's obligations with respect to CME shall remain in effect for 9 years following the Effective Date. Pfizer's obligations with respect to Paragraph 13(b) shall only apply to speakers' contracts entered into, amended to extend the contract period, or renewed after the date of this Judgment.

15.

Pfizer shall require all individuals who are named as authors on a Pfizer-sponsored manuscript reporting the results of a Pfizer-sponsored study to fulfill the following conditions:

(a) the individual shall have made a substantial contribution to the conception and design, or acquisition of data, or analysis and interpretation of data; (b) the individual shall have been involved in drafting the article or revising it critically for important intellectual content; and (c) the individual shall have final approval rights of the version to be published. When a large, multi-center group has conducted the research, the manuscript shall identify the individuals who accept direct responsibility for the manuscript. These individuals should fully meet the criteria for authorship as set forth in (a), (b), and (c) above.

16.

Pfizer shall not disseminate in a promotional context any patient testimonial relating to a Product that does not clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances or clearly and conspicuously disclose the limited applicability of the experience described by the patient testimonial to what consumers may generally expect to achieve.

17.

Pfizer shall not market two or more Products in a manner that falsely or misleadingly conflates the various properties of the respective Products.

18.

Pfizer shall not compensate physicians for conducting individual, observational teaching sessions in their offices or in the hospital ("mentorships") in which sales representatives who detail a Product participate.

19.

Pfizer shall instruct investigators of Pfizer sponsored clinical trials regarding a Product to obtain a legally effective informed consent from all study subjects or from the subject's legally authorized representative. If Pfizer provides the investigator (or the investigator's Institutional Review Board) with a model informed consent, Pfizer shall not fail to include (a) a statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental; (b) a description of any reasonably foreseeable risks or discomforts to the subject; and (c) for research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

20.

Pfizer shall not affirmatively seek the inclusion of a Product in hospital protocols or standing orders unless the Product at issue has been approved by the FDA for the indication for which it is to be included in the protocol or standing order. Notwithstanding the foregoing, Pfizer may disclose to insurance companies and other third party payors any information regarding the inclusion of a Product in hospital protocols or standing orders even if the Product at issue has not been approved by the FDA for the indication for which it is to be included in the protocol or standing order.

21.

Pfizer shall not award prizes or other incentives to its sales force as rewards for specifically increasing the Off-Label use of a Product.

22.

Pfizer shall not disseminate any information describing any Off-Label use of a Product if such use has been submitted to the FDA for approval and the FDA has either advised Pfizer that it refuses to approve such application or that FDA-identified deficiencies must be resolved before approval can be granted unless Pfizer has first clearly and conspicuously disclosed to the information recipient that FDA had issued such advice regarding such Off-Label use. Pfizer may disclose to any recipient of such information whether the information was presented to the FDA prior to the FDA's issuance of such advice regarding the Off-Label use.

23.

Pfizer shall not disseminate a Medical Information Letter, an unabridged reprint or copy of an article from a Peer Reviewed Journal or a Reference Publication, or written information through a Regional Medical Research Specialist ("RMRS") describing any Off-Label use of a Product in response to an unsolicited request by a prescriber or other health care professional unless (a) the information is about a clinical investigation with respect to the Product and experts qualified by scientific training or experience to evaluate the safety or effectiveness of the Product would consider the subject of the clinical investigation to be scientifically sound or the information is an unabridged reprint or copy of an article from a Peer Reviewed Journal or a Reference Publication; (b) the information is accompanied by a comprehensive bibliography of publications discussing adequate and well-controlled clinical studies published in a medical

journal or medical or scientific text that have been previously published about the use of the Product covered by the information (unless the information is a Peer Reviewed Journal or Reference Publication which already includes such a bibliography); and (c) in cases in which experts qualified by scientific training or experience to evaluate the safety or effectiveness of the Product would consider the conclusion of the information to have been specifically called into question by another article(s) or text(s) that experts qualified by scientific training or experience to evaluate the safety or effectiveness of the Product would consider to be scientifically sound, the information must be disseminated with a representative publication that reaches contrary or different conclusions regarding the Off-Label use.

24.

Pfizer shall not disseminate any reprint or copy of an article from a Peer Reviewed Journal or a Reference Publication describing any Off-Label use of the Product to physician specialties that do not customarily prescribe the Product if these materials combined with detailing, advertising, sampling, or other promotional activities promote Off-Label use of the Product.

25.

In the event that FDA issues a final "Guidance For Industry: Good Reprint Practices For The Distribution Of Medical Journal Articles And Medical Or Scientific Reference Publications On Unapproved New Uses Of Approved Drugs And Approved Or Cleared Medical Devices," and a provision of said Guidance materially conflicts with any of the provisions of Paragraphs 22 through 24 of this Judgment, Pfizer may petition the Court for modification of those paragraphs, after providing thirty (30) days' notice to the Attorney General. The parties by stipulation may agree to such a modification, which agreement shall be presented to this Court for consideration

provided that the parties may jointly agree to a modification only by a written instrument signed by or on behalf of both Pfizer and the Attorney General. If Pfizer wishes to seek a stipulation for a modification from the State, it shall send a written request for agreement to such modification to the Attorney General at least 30 days prior to filing a motion with the Court for such modification. Within 30 days of receipt from Pfizer of a written request for agreement to modify, the Attorney General shall notify Pfizer in writing if the Attorney General agrees to the requested modification. The Attorney General shall not unreasonably withhold his/her consent to the modification. The parties agree it would be unreasonable to withhold consent to the terms provided in the draft "Guidance For Industry: Good Reprint Practices For The Distribution Of Medical Journal Articles And Medical Or Scientific Reference Publications On Unapproved New Uses Of Approved Drugs And Approved Or Cleared Medical Devices," dated February 15, 2008, and attached hereto as Appendix 2, in the event that all such terms are included in the final Guidance For Industry. In the event that all such terms are not included in the final Guidance for Industry, the parties agree to consider whether any such terms that are included in the final Guidance for Industry should form the basis of a modification of Paragraphs 22 through 24 of this Judgment.

26.

Pfizer shall not disseminate any Medical Information Letter describing any Off-Label use of a Product that makes any false or misleading representation regarding a Product.

27.

Pfizer shall not disseminate samples of a Product with the intent of increasing Off-label prescribing of the Product.

28.

When submitting clinical trials relating to Off-label indications to journals for publication, Pfizer shall disclose to the journal that the FDA has not approved the drug for the indication that was the subject of the clinical trial.

29.

The Pfizer Medical Education Grants Office shall manage all requests for funding related to CME regarding Products. Approval decisions shall be made by the Pfizer Medical Education Grants Office alone, and shall be kept separate from the Sales and Marketing function. Notwithstanding the foregoing, decisions to approve a request for funding made by the Pfizer Medical Education Grants Office may be subject to actual funding approval by Pfizer's Chief Financial Officer or other designated officials.

30.

Pfizer shall not use grants to advantage or promote Products. This provision includes, but is not limited to, the following prohibitions:

- (a) Sales and Marketing personnel shall not initiate, coordinate or implement grant applications on behalf of any customer or Prescriber;
- (b) Sales and Marketing personnel shall not be involved in selecting grantees or CME-funded speakers; and
- (c) Sales and Marketing personnel shall not measure or attempt to track in any way the impact of grants or speaking fees on the participating Prescribers' subsequent prescribing habits, practices or patterns.

31.

Pfizer Sales and Marketing personnel shall not approve grant requests regarding Products, nor attempt to influence the Pfizer Medical Education Grants Office to reward any customers or Prescribers with grants for their prescribing habits, practices or patterns.

32.

By its execution of this Judgment, State of Michigan releases Pfizer and all of its past and present subsidiaries, affiliates, predecessors and successors (collectively, the "Released Parties") from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties on behalf of the State of Michigan under the above-cited consumer protection statute arising from the Covered Conduct that is the subject of this Judgment.

33.

Notwithstanding any term of this Judgment, specifically reserved and excluded from the Release in Paragraph 32 as to any entity or person, including Released Parties, are any and all of the following:

(a) Any criminal liability that any person or entity, including Released Parties, has or may have to the State of Michigan.

(b) Any civil or administrative liability that any person or entity, including Released Parties, has or may have to the State of Michigan not expressly covered by the release in Paragraph 32 above, including but not limited to any and all of the following claims:

- i) State or federal antitrust violations;
- ii) Reporting practices, including "best price", "average wholesale price" or "wholesale acquisition cost;"
- iii) Medicaid violations, including federal Medicaid drug rebate statute violations, Medicaid fraud or abuse, and/or kickback violations related to any State's Medicaid program; and,

iv) State false claims violations.

(c) Any liability under the State of Michigan's above-cited consumer protection laws which any person or entity, including Released Parties, has or may have to individual consumers or State program payors of said State, and which have not been specifically enumerated as included herein.

34.

Within ten (10) days of the Effective Date of this Judgment, Pfizer shall pay a total amount of sixty million dollars (\$60,000,000) to be divided and paid by Pfizer directly to each Signatory Attorney General in an amount to be designated by and in the sole discretion of the Multistate Executive Committee. Said payment shall be used by the States for attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each Signatory Attorney General.

35.

For the purposes of resolving disputes with respect to compliance with this Judgment, should any of the Signatory Attorneys General have a reasonable basis to believe that Pfizer has engaged in a practice that violates a provision of this Judgment subsequent to the Effective Date of this Judgment, then such Attorney General shall notify Pfizer in writing of the specific objection, identify with particularity the provisions of this Judgment that the practice appears to violate, and give Pfizer thirty (30) days to respond to the notification; provided, however, that a Signatory Attorney General may take any action if the Signatory Attorney General concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

Upon receipt of written notice, Pfizer shall provide a good-faith written response to the Attorney General notification, containing either a statement explaining why Pfizer believes it is in compliance with the Judgment, or a detailed explanation of how the alleged violation occurred and a statement explaining how Pfizer intends to cure the alleged breach. Nothing in this paragraph shall be interpreted to limit the state's Civil Investigative Demand ("CID") or subpoena authority, to the extent such authority exists under applicable state law, and Pfizer reserves all of its rights with respect to a CID or subpoena issued pursuant to such authority.

36.

Upon giving Pfizer thirty (30) days to respond to the notification described above, the Signatory Attorney General shall also be permitted reasonable access to inspect and copy relevant, non-privileged, non-work product records and documents in the possession, custody or control of Pfizer that relate to Pfizer's compliance with each provision of this Judgment as to which cause that is legally sufficient in the State has been shown. If the Signatory Attorney General makes or requests copies of any documents during the course of that inspection, the Signatory Attorney General will provide a list of those documents to Pfizer.

37.

The State may assert any claim that Pfizer has violated this Judgment in a separate civil action solely to enforce compliance with this Judgment, or to seek any other relief afforded by law, but only after providing Pfizer an opportunity to respond to the notification described in Paragraph 35 above; provided, however, that a Signatory Attorney General may take any action if the Signatory Attorney General concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

38.

This Judgment represents the full and complete terms of the settlement entered into by the parties hereto. In any action undertaken by either the Attorneys General, or any of them, or

Pfizer, no prior versions of this Judgment, and no prior versions of any of its terms, that were not entered by the Court in this Judgment, may be introduced for any purpose whatsoever.

IT IS SO STIPULATED:

Signed this 17 day of October, 2008.

PFIZER INC



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Attorneys for Pfizer Inc



Markus Green
Corporate Counsel
Pfizer Inc

PLAINTIFF

Signed this 21st day of October, 2008.

MICHAEL A. COX
Attorney General



Suzanne Hassan (P67620)
Assistant Attorney General
Michigan Department of Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
(517) 335-0855
Fax: (517) 335-1935

This CONSENT JUDGMENT is hereby accepted for entry of JUDGMENT for all purposes as set forth herein.

IT IS SO ADJUDGED AND ORDERED:

DATED this 22nd day of October, 2008.

WILLIAM E. COLLETTE

CIRCUIT COURT JUDGE for Ingham County,

APPENDIX 1



ACCME STANDARDS FOR COMMERCIAL SUPPORTSM

*Standards to Ensure the
Independence of CME
Activities*

The ACCME Standards for Commercial SupportSM

Standards to Ensure Independence in CME Activities

STANDARD 1: Independence

- 1.1 A CME provider must ensure that the following decisions were made free of the control of a commercial interest. (See www.accme.org for a definition of a 'commercial interest' and some exemptions.)
- (a) Identification of CME needs;
 - (b) Determination of educational objectives;
 - (c) Selection and presentation of content;
 - (d) Selection of all persons and organizations that will be in a position to control the content of the CME;
 - (e) Selection of educational methods;
 - (f) Evaluation of the activity.
- 1.2 A commercial interest cannot take the role of non-accredited partner in a joint sponsorship relationship.¶

STANDARD 2: Resolution of Personal Conflicts of Interest

- 2.1 The provider must be able to show that everyone who is in a position to control the content of an education activity has disclosed all relevant financial relationships with any commercial interest to the provider. The ACCME defines "relevant" financial relationships" as financial relationships in any amount occurring within the past 12 months that create a conflict of interest.
- 2.2 An individual who refuses to disclose relevant financial relationships will be disqualified from being a planning committee member, a teacher, or an author of CME, and cannot have control of, or responsibility for, the development, management, presentation or evaluation of the CME activity.
- 2.3 The provider must have implemented a mechanism to identify and resolve all conflicts of interest prior to the education activity being delivered to learners.¶

STANDARD 3: Appropriate Use of Commercial Support

- 3.1 The provider must make all decisions regarding the disposition and disbursement of commercial support.
- 3.2 A provider cannot be required by a commercial interest to accept advice or services concerning teachers, authors, or participants or other education matters, including content, from a commercial interest as conditions of contributing funds or services.

- 3.3 All commercial support associated with a CME activity must be given with the full knowledge and approval of the provider.

Written agreement documenting terms of support

- 3.4 The terms, conditions, and purposes of the commercial support must be documented in a written agreement between the commercial supporter that includes the provider and its educational partner(s). The agreement must include the provider, even if the support is given directly to the provider's educational partner or a joint sponsor.
- 3.5 The written agreement must specify the commercial interest that is the source of commercial support.
- 3.6 Both the commercial supporter and the provider must sign the written agreement between the commercial supporter and the provider.

Expenditures for an individual providing CME

- 3.7 The provider must have written policies and procedures governing honoraria and reimbursement of out-of-pocket expenses for planners, teachers and authors.
- 3.8 The provider, the joint sponsor, or designated educational partner must pay directly any teacher or author honoraria or reimbursement of out-of-pocket expenses in compliance with the provider's written policies and procedures.
- 3.9 No other payment shall be given to the director of the activity, planning committee members, teachers or authors, joint sponsor, or any others involved with the supported activity.
- 3.10 If teachers or authors are listed on the agenda as facilitating or conducting a presentation or session, but participate in the remainder of an educational event as a learner, their expenses can be reimbursed and honoraria can be paid for their teacher or author role only.

Expenditures for learners

- 3.11 Social events or meals at CME activities cannot compete with or take precedence over the educational events.

3.12 The provider may not use commercial support to pay for travel, lodging, honoraria, or personal expenses for non-teacher or non-author participants of a CME activity. The provider may use commercial support to pay for travel, lodging, honoraria, or personal expenses for bona fide employees and volunteers of the provider, joint sponsor or educational partner.

Accountability

3.13 The provider must be able to produce accurate documentation detailing the receipt and expenditure of the commercial support. ¶

STANDARD 4. Appropriate Management of Associated Commercial Promotion

4.1 Arrangements for commercial exhibits or advertisements cannot influence planning or interfere with the presentation, nor can they be a condition of the provision of commercial support for CME activities.

4.2 Product-promotion material or product-specific advertisement of any type is prohibited in or during CME activities. The juxtaposition of editorial and advertising material on the same products or subjects must be avoided. Live (staffed exhibits, presentations) or enduring (printed or electronic advertisements) promotional activities must be kept separate from CME.

- For *print*, advertisements and promotional materials will not be interleaved within the pages of the CME content. Advertisements and promotional materials may face the first or last pages of printed CME content as long as these materials are not related to the CME content they face and are not paid for by the commercial supporters of the CME activity.
- For *computer based*, advertisements and promotional materials will not be visible on the screen at the same time as the CME content and not interleaved between computer 'windows' or screens of the CME content
- For *audio and video recording*, advertisements and promotional materials will not be included within the CME. There will be no 'commercial breaks.'
- For *live, face-to-face CME*, advertisements and promotional materials cannot be displayed or distributed in the educational space immediately before, during, or after a CME activity. Providers cannot allow representatives of Commercial Interests to engage in sales or promotional activities while in the space or place of the CME activity.

4.3 Educational materials that are part of a CME activity, such as slides, abstracts and handouts, cannot contain any advertising, trade name or a product-group message.

4.4 Print or electronic information distributed about the non-CME elements of a CME activity that are not directly related to the transfer of education to the learner, such as schedules and content descriptions, may include product-promotion material or product-specific advertisement.

4.5 A provider cannot use a commercial interest as the agent providing a CME activity to learners, e.g., distribution of self-study CME activities or arranging for electronic access to CME activities. ¶

STANDARD 5. Content and Format without Commercial Bias

5.1 The content or format of a CME activity or its related materials must promote improvements or quality in healthcare and not a specific proprietary business interest of a commercial interest.

5.2 Presentations must give a balanced view of therapeutic options. Use of generic names will contribute to this impartiality. If the CME educational material or content includes trade names, where available trade names from several companies should be used, not just trade names from a single company. ¶

STANDARD 6. Disclosures Relevant to Potential Commercial Bias

Relevant financial relationships of those with control over CME content

6.1 An individual must disclose to learners any relevant financial relationship(s), to include the following information:

- The name of the individual;
- The name of the commercial interest(s);
- The nature of the relationship the person has with each commercial interest.

6.2 For an individual with no relevant financial relationship(s) the learners must be informed that no relevant financial relationship(s) exist.

Commercial support for the CME activity.

6.3 The source of all support from commercial interests must be disclosed to learners. When commercial support is 'in-kind' the nature of the support must be disclosed to learners.

6.4 'Disclosure' must never include the use of a trade name or a product-group message.

Timing of disclosure

6.5 A provider must disclose the above information to learners prior to the beginning of the educational activity. ¶

APPENDIX 2



Guidance for Industry:
**Good Reprint Practices for the Distribution of Medical
Journal Articles and Medical or Scientific Reference
Publications on Unapproved New Uses of Approved Drugs
and Approved or Cleared Medical Devices**

DRAFT GUIDANCE

This guidance document is being distributed for comment purposes only

Comments and suggestions regarding this draft document should be submitted within 60 days of publication in the *Federal Register* of the notice announcing the availability of the draft guidance. Submit comments to Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number listed in the notice of availability that publishes in the *Federal Register*.

For single copies of this draft guidance, please contact: Office of Policy, Food and Drug Administration, 5600 Fishers Lane, rm. 14-101, HF-11, Rockville, MD 20857, (301) 827-3360.

For questions regarding this draft document, contact Jarilyn Dupont, Office of Policy, Food and Drug Administration, (301) 827-3360.

U.S. Department of Health and Human Services
Food and Drug Administration

February 2008

Contains Nonbinding Recommendations
Draft – Not for Implementation

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Contains Nonbinding Recommendations
Draft – Not for Implementation

**Guidance for Industry: Good Reprint Practices for the Distribution of Medical Journal Articles
and Medical or Scientific Reference Publications on Unapproved New Uses of Approved
Drugs and Approved or Cleared Medical Devices**

This draft guidance document represents the Food and Drug Administration's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You may use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, please contact the appropriate FDA staff.

I. Introduction

This draft guidance is intended to describe the Food and Drug Administration's (FDA or Agency) current thinking regarding "Good Reprint Practices" with regard to the distribution of medical journal articles and scientific or medical reference publications (referred to generally as medical and scientific information) that discuss unapproved new uses for approved drugs¹ or approved or cleared medical devices marketed in the United States to healthcare professionals and healthcare entities.

FDA's guidance documents, including this draft guidance, do not establish legally enforceable rights or responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word should in Agency guidances means that something is suggested or recommended, but not required.

II. Background

Section 401 of the Food and Drug Administration Modernization Act (FDAMA (21 U.S.C. § 360aaa, § 551, Federal Food, Drug, and Cosmetic Act (FD&C Act))), described certain conditions under which a drug or medical device manufacturer² could choose to disseminate medical and scientific information discussing unapproved uses of approved drugs and cleared or approved medical devices to healthcare professionals and certain entities (including pharmacy benefits managers, health insurance issuers, group health plans, and Federal or State governmental agencies). FDAMA section 401 provided that, if these conditions were met, dissemination of such journal articles or reference publications would not be considered as evidence of the manufacturer's intent that the product be used for an unapproved new use. FDA implementing regulations were codified at 21 C.F.R. Part 99.

In 2000, subsequent to a decision by the United States Court of Appeals for the District of Columbia Circuit, FDA published a Notice (65 Fed. Reg. 14286, March 16, 2000) clarifying the applicability of the FDAMA section 401 provision and the FDA implementing regulations. In that Notice, FDA stated that the statute and implementing regulations constituted a "safe harbor" for a manufacturer that complies with them before and while disseminating journal articles and reference publications about "new uses" of approved or cleared products. If a manufacturer complied with the FDAMA provision, the distribution of such journal articles or reference publications would not be used as evidence of an intent that the product distributed by the manufacturer be used for an unapproved use. The Notice stated that if a manufacturer chose to disseminate materials but not proceed under FDAMA section 401, that failure would not constitute an independent violation of law.

FDAMA section 401 ceased to be effective on September 30, 2006, and the implementing regulations are no longer applicable. In light of the statute's sunset, FDA is providing its current views on the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of approved drugs and approved or cleared medical devices to healthcare professionals and healthcare entities.

III. Purpose

As explained in FDA's March 16, 2000 Notice, the FD&C Act and FDA's implementing regulations generally prohibit manufacturers of new drugs or medical devices from distributing products in interstate commerce for any intended use that FDA has not approved as safe and effective or cleared through a substantial equivalence determination. (E.g., FD&C Act §§ 505(a), 502(o), 501(f)(1)(B), 301(a) and (d); 21 U.S.C. §§ 355, 352(o), 351(f)(1)(B), 331(a) and (d)). An approved new drug that is marketed for an unapproved use becomes misbranded and an unapproved new drug with respect to that use. Similarly, a medical device that is promoted for a use that has not been approved or cleared by FDA is adulterated and misbranded.

FDA does, however, recognize the important public policy reasons for allowing manufacturers to disseminate truthful and non-misleading medical journal articles and medical or scientific reference publications on unapproved uses of approved drugs and approved or cleared medical devices to healthcare professionals and healthcare entities. Once a drug or medical device has been approved or cleared by FDA, generally healthcare professionals may lawfully use or prescribe that product for uses or treatment regimens that are not included in the product's approved labeling (or, in the case of a medical device cleared under the 510(k) process, in the product's statement of intended uses). These off-label uses or treatment regimens may be important and may even constitute a medically recognized standard of care. Accordingly, the public health may be advanced by healthcare professionals' receipt of medical journal articles and medical or scientific reference publications on unapproved or new uses of approved or cleared medical products that are truthful and not misleading.

FDA's legal authority to determine whether distribution of medical or scientific information constitutes promotion of an unapproved "new use," or whether such activities cause a product to be misbranded or adulterated has not changed. In recognition of the public health value to healthcare professionals of receiving truthful and non-misleading scientific and medical information, FDA is providing recommendations concerning "Good Reprint Practices" for the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of drugs and medical devices.³

IV. Agency Recommendations for Good Reprint Practices

Scientific and medical information that concerns the safety or effectiveness of an approved drug or approved or cleared medical device for a new use that is not included in the product's approved labeling or statement of intended uses (including unapproved or new uses of approved drugs and approved or cleared devices) is often published in journal articles or reference publications. These publications are often distributed by manufacturers to healthcare professionals or healthcare entities. When a manufacturer disseminates such medical and scientific information, FDA recommends that the following principles of "Good Reprint Practices" be followed.

A. Types of Reprints/Articles/Reference Publications

A scientific or medical journal article that is distributed should:

- be published by an organization that has an editorial board that uses experts who have demonstrated expertise in the subject of the article under review by the organization and who are independent of the organization to review and objectively select, reject, or provide comments about proposed articles, and that has a publicly stated policy, to which the organization adheres, of full disclosure of any conflict of interest or biases for all authors, contributors, or editors associated with the journal or organization;
- be peer-reviewed and published in accordance with the peer-review procedures of the organization; and
- not be in the form of a special supplement or publication that has been funded in whole or in part by one or more of the manufacturers of the product that is the subject of the article.

A scientific or medical reference publication that is distributed should not be:

- primarily distributed by a drug or device manufacturer, but should be generally available in bookstores or other independent distribution channels where medical textbooks are sold;
- written, edited, excerpted, or published specifically for, or at the request of, a drug or device manufacturer; or
- edited or significantly influenced by a drug or device manufacturer or any individuals having a financial relationship with the manufacturer.

The information contained in the above scientific or medical journal article or reference publications should address adequate and well-controlled clinical investigations that are considered scientifically sound by experts with scientific training and experience to evaluate the safety or effectiveness of the drug or device⁴. The information must not:

- be false or misleading, such as a journal article or reference text that is inconsistent with the weight of credible evidence derived from adequate and well-controlled clinical investigations (e.g., where a significant number of other studies contradict the article or reference text's conclusions), that has been withdrawn by the journal or disclaimed by the author, or that discusses a clinical investigation where FDA has previously informed the company that the clinical investigation is not adequate and well-controlled; or
- pose a significant risk to the public health.

The following publications are examples of publications that would not be considered consistent with the Good Reprint Practices outlined in this draft guidance:

- letters to the editor;
- abstracts of a publication;
- reports of Phase 1 trials in healthy subjects; or
- reference publications that contain little or no substantive discussion of the relevant investigation or data.

B. Manner in which to Disseminate Scientific and Medical Information

Scientific or medical information that is distributed should:

- be in the form of an unabridged reprint, copy of an article, or reference publication;
- not be marked, highlighted, summarized, or characterized by the manufacturer in any way;
- be accompanied by the approved labeling for the drug or medical device;
- be accompanied by a comprehensive bibliography of publications discussing adequate and well-controlled clinical studies published in a medical journal or medical or scientific text that have been previously published about the use of the drug or medical device covered by the information disseminated (unless the information already includes such a bibliography);
- in cases where the conclusions of article or text to be disseminated have been specifically called into question by another article(s) or text(s), be disseminated with a representative publication that reaches contrary or different conclusions regarding the unapproved use; and

- be distributed separately from information that is promotional in nature. For example, if a sales representative delivers a reprint to a physician in his office, the reprint should not be physically attached to any promotional material the sales representative uses or delivers during the office visit and should not be the subject of discussion between the sales representative and the physician during the sales visit.⁵ Similarly, while reprints may be distributed at medical or scientific conferences in settings appropriate for scientific exchange, reprints should not be distributed in promotional exhibit halls or during promotional speakers' programs.

The journal reprint or reference publication should be accompanied by a prominently displayed and permanently affixed statement disclosing:

- that the uses described in the information have not been approved or cleared by FDA, as applicable to the described drug or medical device;
- the manufacturer's interest in the drug or medical device that is the subject of the journal reprint or reference text;
- any author known to the manufacturer as having a financial interest in the product or manufacturer or receiving compensation from the manufacturer, if applicable;
- any person known to the manufacturer who has provided funding for the study, if applicable; and
- any significant risks or safety concerns known to the manufacturer concerning the unapproved use that are not discussed in the journal article or reference text.

V. Summary

FDA recognizes that the public health can be served when health care professionals receive truthful and non-misleading scientific and medical information on unapproved uses of approved or cleared medical products. Accordingly, if a manufacturer follows the recommendations described in Section IV of this draft guidance and there is no unlawful promotion of the product, FDA does not intend to use the distribution of such medical and scientific information as evidence of an intent by the manufacturer that the product be used for an unapproved use.⁶

Footnotes

¹ As used in this draft guidance, the term "drug" includes biological products licensed under Section 351(a) of the Public Health Service Act. See 42 U.S.C. § 262(j).

² As used in this draft guidance, the term "manufacturer" means a person who manufactures a drug or device or who is licensed by such person to distribute or market the drug or device. The term may also include the sponsor of the approved, licensed, or cleared drug or device.

³ This draft guidance does not apply to scientific or medical information distributed in response to unsolicited requests for scientific or medical information from health care professionals. See 59 Fed. Reg. 59820, 59823 (November 18, 1994).

⁴ In the case of medical devices, journal articles or reference publications discussing significant non-clinical research may be consistent with this draft guidance.

⁵ To the extent that the recipients of such information have questions, the Agency recommends that the sales representative refer such questions to a medical/scientific officer or department, and that the officer or department to which the referral is made be separate from the sales and/or marketing departments.

⁶ Given the sunset of FDAMA § 401, the other elements that comprised § 401 which are not specifically described in this draft guidance are no longer applicable.

For More Information

Press Release (February 15, 2008)
Federal Register (Docket No. FDA-2008-D-0053, OC 2007268)

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