

STATE SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement ("Agreement") is entered into by the state of Michigan and SmithKline Beecham Corporation d/b/a GlaxoSmithKline ("GSK"), hereinafter collectively referred to as "the Parties."

II. PREAMBLE

As a preamble to this State Agreement, the Parties agree as follows:

A. On March 31, 2001, Glaxo Wellcome Inc., a North Carolina corporation with a principal place of business in Research Triangle Park, North Carolina ("Glaxo"), was merged into SmithKline Beecham Corporation, a Pennsylvania corporation with a principal place of business in Philadelphia, Pennsylvania ("SmithKline"). SmithKline Beecham Corporation now has operations in both Research Triangle Park, North Carolina and Philadelphia, Pennsylvania, and is doing business in the United States as GlaxoSmithKline ("GSK").

B. At all relevant times, both Glaxo and SmithKline marketed and sold pharmaceutical products nationwide. Among other drugs, Glaxo marketed and sold the prescription drug product fluticasone propionate 0.05%, a nasal spray, marketed under the brand name Flonase®. Among other drugs, SmithKline marketed and sold the prescription drug product Paroxetine HCl 20 mg, an anti-depressant, marketed under the brand name Paxil®. Collectively Flonase and Paxil will be referred to herein as "the drugs." Both Glaxo and SmithKline sold the drugs to various customers including, among others, health maintenance organizations ("HMO"), hospitals, long term care providers, and chain pharmacies. One HMO that purchased the drugs from both Glaxo and SmithKline was Kaiser Permanente Medical Care Program ("Kaiser").

C. At relevant times, Glaxo agreed to private label Flonase for Kaiser. The term "private labeled," as used herein, describes where Glaxo affixed a label to Flonase that, among

other changes to the label, displayed Kaiser's national drug code ("NDC") instead of Glaxo's NDC number. Glaxo agreed to sell the private labeled Flonase to Kaiser at a discounted price.

D. At relevant times, SmithKline agreed to sell Paxil to Kaiser in bulk quantities not otherwise commercially available for repackaging by Kaiser. The term "repackaging," as used herein, describes where SmithKline made bulk sales of Paxil to Kaiser, that Kaiser repackaged and relabeled with Kaiser's NDC number. SmithKline agreed to sell the Paxil in bulk quantities to Kaiser at a discounted price.

E. At all material times, both Glaxo and SmithKline participated in the Medicaid Rebate Program, 42 U.S.C. § 1396r-8, which is part of the federal Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. As a participant in the Medicaid Rebate Program, both Glaxo and SmithKline entered into a rebate agreement with the Health Care Financing Administration ("HCFA"), currently known as the Centers for Medicare and Medicaid Services ("CMS"), and both Glaxo and SmithKline's drug products were covered by state Medicaid plans that provided medical assistance for outpatient prescription drugs. 42 U.S.C. §§ 1396a(10)(A); 1396d(a)(12), and 1396r-8(a)(1). Under the Medicaid Rebate Program and rebate agreement with HCFA, both Glaxo and SmithKline generally agreed: (i) to report quarterly to HCFA their respective average manufacturer price and best price for their drug products, as defined by 42 U.S.C. §§ 1396r-8(k)(5) and 1396r-8(c)(1)(C); and (ii) to pay quarterly rebates to the states based on the product of (a) the units of each dosage form and strength paid for under the State Medicaid plan during the rebate period as reported by the state, and (b) the greater of the difference between the average manufacturer price and best price, or a minimum rebate percentage of the average manufacturer price, as further defined in 42 U.S.C. § 1396r-8(c)(1)(A).

F. The state of Michigan contends that it has certain civil claims against GSK under the False Claims Act, 31 U.S.C. §§ 3729-33, the Medicaid Rebate Program, 42 U.S.C. § 1396r-8, the Drug Pricing Program, 42 U.S.C. § 256b, other federal and state statutes, and/or common law doctrines for engaging in the following conduct:

(i) The state of Michigan contends that, from First Quarter 1997 through First Quarter 2000, Glaxo knowingly misreported its best price to HCFA and underpaid its Medicaid rebates for Flonase by omitting the price of Flonase that was private labeled for Kaiser from its determination of best price;

(ii) The state of Michigan contends that, in Third Quarter 2000, SmithKline knowingly misreported its best price to HCFA and underpaid its Medicaid rebates for Paxil by omitting the price of Paxil that was sold to and repackaged by Kaiser from its determination of best price;

Collectively, the conduct listed in this paragraph will be referred to as the "Covered Conduct".

G. HHS-OIG and the state of Michigan contend that they have certain administrative claims against GSK under the provisions for permissive exclusion from the Medicaid program, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. §§ 1320a-7a and 1396r-8(b)(3)(C)(ii), for the Covered Conduct.

H. GSK denies the allegations of the state of Michigan and HHS-OIG as set forth in paragraphs F and G of this agreement and denies that it has any liability relating to these contentions and allegations.

I. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. GSK agrees to pay to the United States and to the Participating States, collectively, the sum of eighty-seven million, six-hundred thousand, nine-hundred and twenty-two dollars (\$87,600,922) (the "Settlement Amount") Payment to the United States and to the participating states shall be made pursuant to the following terms and conditions:

A. GSK shall pay to the United States the sum of forty-six million, seven-hundred, seventy-three thousand, four-hundred and three dollars (\$46,773,403) (the Federal Settlement Amount), which represents the federal share of the Settlement Amount. The Federal Settlement Amount shall be paid pursuant to the civil settlement agreement entered between GSK and the United States (the "Federal Agreement").

B. GSK agrees to deposit into an escrow account the sum of thirty-eight million, two-hundred sixty-nine thousand, one-hundred and forty-eight dollars (\$38,269,148) (the State Settlement Amount), which represents the state-funded portions of the claims settled for the Medicaid programs of all fifty states (except Arizona) and the District of Columbia ("the Participating States"). GSK shall pay the State Settlement Amount into an escrow account within seven business days after the latest date on which all of the following have occurred: (1) the Federal Agreement is fully executed by the Parties and delivered to GSK's attorneys, (2) the parties agree to a state model settlement agreement to be circulated to the Participating States. The escrow account into which GSK shall deposit the State Settlement Amount shall be an interest bearing escrow account under the custody and control of a Medicaid Fraud Control Unit, which shall be designated by the negotiating team for the National Association of Medicaid Fraud Control Units and which shall act as Escrow Agent and shall retain such funds until their release.

C. The total portion of the Settlement Amount paid by GSK in settlement for alleged injury to the Medicaid Program for the state of Michigan is \$2,265,801.59, consisting of a portion paid to the state of Michigan under this Agreement and another portion paid to the federal government as part of the Federal Settlement Amount. The individual portion of the

State Settlement Amount allocable to the state of Michigan, is \$1,099,643.82 (the "Individual State Settlement Amount").

D. The state of Michigan shall be entitled to disbursement of its Individual State Settlement Amount from the escrow account after the Escrow Agent has received fully executed state settlement agreements from the Participating States. Any escrowed funds not disbursed to a state (non-participating state(s)) shall be disbursed to GSK.

2. In consideration of this Agreement and payment set forth herein and subject to the exceptions from release set forth in Paragraph 3 below, the state of Michigan on behalf of itself, its officers, agents, agencies and departments shall release and forever discharge GSK, its predecessors, subsidiaries, joint venture owners, and their corporate parents and affiliates, successors and assigns, from any civil or administrative claims for damages or penalties that the state of Michigan has or may have relating to the Covered Conduct. The payment of the Settlement Amount fully discharges GSK from any obligation to pay Medicaid-related restitution, damages, and/or any fine or penalty to the state for the Covered Conduct.

3. Notwithstanding any term of this Agreement, the state of Michigan specifically does not herein release GSK, its predecessors, subsidiaries, joint venture owners, and their corporate parents and affiliates, successors and assigns, and their current and former directors, officers, and employees from any and all of the following: (a) any potential criminal, civil or administrative claims arising under state of Michigan revenue codes; (b) any criminal liability; (c) any civil or administrative liability that GSK has or may have under any state statute, regulation, or rule not covered by the release; (d) except as explicitly stated in this State Settlement Agreement, any administrative liability, including mandatory exclusion from the state of Michigan's Medicaid program; (e) any liability to the state of Michigan (or its agencies) for any conduct other than the Covered Conduct; (f) any claims based upon such obligations as are created by this State Settlement Agreement

4. In consideration of the obligations of GSK set forth in this Agreement, conditioned upon GSK's payment in full of the Settlement Amount and except as reserved in Paragraph 3 above, the state of Michigan agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusions from the state of Michigan's Medicaid program against GSK, its predecessors, subsidiaries, joint venture owners, their corporate parents and affiliates, successors and assigns, for the Covered Conduct. Nothing in this Agreement precludes the state of Michigan from taking action against GSK in the event that GSK is excluded by the federal government, or for conduct and practices other than the Covered Conduct. The Medicaid Fraud Control Unit for the state of Michigan further agrees to refrain from recommending, causing or attempting to cause any administrative action or sanction, including debarment, by any other government agency of the state of Michigan for the Covered Conduct. GSK acknowledges that the state of Michigan does not have the authority to release GSK from any claims or actions which may be asserted by private payors or insurers, including those that are paid on a capitated basis for providing health care to the States' Medicaid programs.

5. GSK fully and finally releases the state of Michigan, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which GSK has asserted, could have asserted, or may assert in the future against the state of Michigan, its agencies, employees, servants, and agents, related to or arising from the investigation and prosecution of the Covered Conduct up to the effective date of this Settlement Agreement.

6. GSK waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or Excessive Fines Clause of the Eighth Amendment of the

Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. The Settlement Amount that GSK shall pay will not be decreased as a result of the denial of claims for payment now being withheld from payment by the state of Michigan's Medicaid program where such denial resulted from the Covered Conduct. If applicable, GSK agrees not to resubmit to the program any previously denied claims where such denial resulted from the Covered Conduct and agrees not to appeal any such denials of claims.

8. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, including but not limited to any individual or entity that purchased Flonase and Paxil from GSK.

9. Nothing in any provision of this Agreement constitutes an agreement by the state of Michigan concerning the characterization of the Settlement Amount for purposes of the state internal revenue laws.

10. This Agreement does not constitute an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issues of law or fact.

11. In addition to all other payment and responsibilities under this Agreement, GSK agrees to pay all reasonable travel costs and expenses of the NAMFCU state negotiating team. GSK will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Participating States execute this Agreement.

12. GSK has entered into a corporate Integrity Agreement (CIA) with HHS/OIG in connection with this matter.

13. GSK represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. The undersigned GSK signatory represents and warrants that he is duly authorized as a result of appropriate corporate action to execute this Agreement. The undersigned state of Michigan signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement on behalf of the state of Michigan through their respective agencies and departments.

15. This Agreement is governed by the laws of the state of Michigan.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement.

17. This Agreement shall be binding on all successors, transferees, heirs and assigns of the Parties.

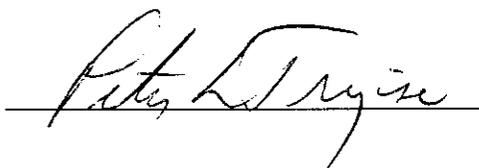
18. This Agreement constitutes the complete agreement between the Parties with regard to the Covered Conduct. This Agreement may not be amended except by written consent of the Parties.

19. Each party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out this Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

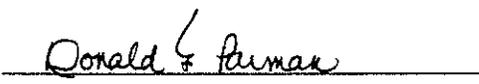
For the state of Michigan:

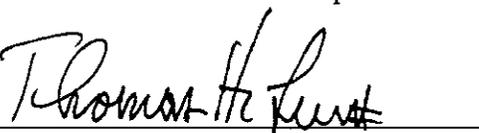
By:  Dated: 5-19-03
Wallace T. Hart
Assistant in Charge
Health Care Fraud Division
Title: Michigan Office of Attorney General

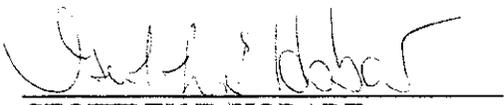
For the state of Michigan Medicaid Program:

By:  Dated: 5-9-03
Title: _____

**SMITHKLINE BEECHAM CORPORATION
d/b/a GLAXOSMITHKLINE**

By:  Dated: 12/9/03
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