

PATENTED MEDICINE PRICES REVIEW BOARD

**IN THE MATTER OF the *Patent Act*,
R.S.C., 1985, c. P-4, as amended**

**AND IN THE MATTER OF
Alexion Pharmaceuticals Inc. (“Respondent”)
and the medicine “Soliris”**

NOTICE OF MOTION

(Motion to Strike Portions of the FURTHER AMENDED NOTICE OF APPEARANCE
Filed by the Minister of Health for B.C. on his own Behalf and on Behalf of
the Provinces of Ontario, Manitoba and Newfoundland and Labrador)

RESPONDENT, ALEXION Pharmaceuticals Inc. (“Respondent” or “Alexion”), will present a motion before the Panel at the Hearing currently scheduled for 16 September 2015 at the Board’s offices in Ottawa. Alexion seeks:

ORDERS:

1. Striking out paragraphs 1 and 3 of, and Appendix A to, the “Further Amended Notice of Appearance” (“Further Appearance”) of the Minister of Health for British Columbia (“BC Minister”) dated 26 June 2015.
2. Such further or other relief as Alexion may request and the Panel deem appropriate to grant.

GROUNDS FOR THE MOTION ARE:

3. In the Further Appearance, the BC Minister has advanced a new or different case, and sought different relief, than Board Staff have asserted or requested in the Statement of Allegations (“Allegations”). The Further Appearance is thus contrary to Section 86(2) of the *Patent Act*, which limits the BC Minister’s representations to “the matter being heard.” Moreover, in addition to being different from the relief sought by Board Staff, the remedy sought in the Further Appearance goes beyond the remedial approaches articulated in the Guidelines and the Board’s jurisprudence.

4. The “matter being heard” before the Panel arises from an investigation initiated by Board Staff and established, under subsection 15(3) of the Board’s Rules of Practice and Procedure (“Rules”). In particular, Rule 15 (3)(a) of the Rules provides:

(3) a notice of hearing must be accompanied by

(a) in the case of an allegation of a patented medicine sold at an excessive price, a statement of allegations set out in consecutively numbered paragraphs containing the material facts, the allegations in the order sought by Board Staff in the proceeding. [Underlining added.]

5. The legislative scheme provides that interested ministers have a right to make representations only after a notice of hearing, together with a statement of allegations, has been issued. A notice of hearing and statement of allegations are only issued after an investigation has been initiated by Board Staff and the parties have been unable to resolve issues identified by the investigation through a Voluntary Compliance Undertaking or other means.

6. There is no statutory right, or rule, conferring on provincial ministers a right to initiate an investigation or hearing. Provincial ministers, like the BC Minister in this case, cannot advance

alternative theories of liability or request different remedies than Board Staff seek in a notice of hearing or statement of allegations.

7. The BC Minister's representations under section 86 (3) must be confined to addressing issues raised by Board Staff in the Allegations. While the BC Minister may have a different perspective on issues raised by Board Staff, the minister cannot introduce entirely new issues or seek entirely different relief than Board Staff, particularly relief that is outside the scope of the Guidelines. An intervener takes the pleadings and record as it finds them and cannot raise or litigate new issues.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

8. The Further Appearance dated 26 June 2015.

9. Such further and other material as Alexion may adduce and the Panel admit.

Dated: 21 August 2015



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