



FOOD AND DRUG ADMINISTRATION
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH

MEMORANDUM

DATE: June 26, 2007

FROM: William Freas, Ph.D. / S |
Director, Division of Scientific Advisors and Consultants

SUBJECT: 208(b)(3) Waiver for Melvin Berger, M.D., Ph.D.

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

Through: Vince Tolino
Director, Ethics and Integrity Staff
Office of Management Programs, OM

I am writing to request a waiver for Melvin Berger, M.D, Ph.D., a consultant of the Center for Biologics Evaluation and Research (CBER) at the August 16, 2007 meeting, from conflict of interest prohibitions of 18 U.S.C. 208(a). On August 16, 2007, Topic 2, the Committee will discuss measles antibody levels in U.S. immune globulin products. This is a particular matters of general applicability (not a product recommendation discussion). Waivers under Section 208(b)(3) may be granted by the appointing official where "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved" and where the individual has made a disclosure of the financial interests at issue. Because you are the appointing official, you have the authority to grant Dr. Berger a waiver under Section 208(b)(3). Section 208(a) prohibits Federal executive branch employees, including special Government employees, from participating personally and substantially in matters in which, to his knowledge, the employee, his spouse, minor children, or general partner; an organization in which he is serving as officer, director, trustee, general partner, or employee, or a person or organization with which he is negotiating for or has arrangement concerning prospective employment has a financial interest. Dr. Berger is a special Government employee and is under a statutory obligation to refrain from participating in any deliberations that involve a particular matter having a direct and predictable effect on a financial interest attributable to him or to his employer.

The function of the Committee, as stated in its Charter, is to advise the Commissioner of the Food and Drug Administration in discharging responsibilities as they relate to assuring safe and effective use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human disease.

The Committee is scheduled to meet on August 16, 2007. On August 16, Topic 2, the Committee will discuss measles antibody levels in U.S. immune globulin products. Measles antibody levels are a standard lot release measure of potency in U.S. immune globulins. Declining measles antibody levels have been observed in immune globulin products over the past several years due to the decline of titers in the blood donor population. The regulatory impact of the declining measles antibody titers is that lots must be rejected if they fail the lot specification. Rejection of lots could lead to a negative impact on the supply of immune globulin products. Possible approaches to address the decline of measles antibodies in immune globulins will be discussed by the Committee in the context of current measles epidemiology in the U.S.; the potential re-emergence of epidemic measles in vaccinated individuals; estimated protective titers for those with primary immune deficiency diseases; and, the possible adverse clinical impact of lower antibody titers on patients with primary immune deficiency diseases. Due to the nature of this topic, the Division needs, at a minimum, at least two opinions from clinical immunologists with expertise in primary immune deficiency diseases. This Committee discussion is a particular matters of general applicability (not a product recommendation discussion).

Dr. Berger has advised the FDA that he consults with firms that could potentially be affected by his participation in the matter at issue. Dr. Berger is a consultant for [REDACTED] and has consulted on [REDACTED]. He received [REDACTED] for his service. Dr. Berger's consulting is ongoing since June 1, 2006 to present. He consults for [REDACTED] on [REDACTED]. He receives [REDACTED] per year for his services. His consulting is ongoing since March 1, 2006 to present. He is a consultant for [REDACTED] on [REDACTED]. He receives [REDACTED] a year for his services. His consulting is ongoing since June 1, 2005. He also consults for [REDACTED] (through [REDACTED]) on [REDACTED]. He receives [REDACTED] a year for his service. His consulting is ongoing since June 1, 2006 to present. All four consulting services are related to issues being discussed by the Committee. In addition, Dr. Berger also reported his institution has a related grant with [REDACTED] to study [REDACTED]. Dr. Berger is the Principal Investigator, he will receive [REDACTED] in salary support from this grant. In addition Dr. Berger reported his institution has a contract under negotiation with [REDACTED] for a clinical trial to study [REDACTED]. He may be the Site Investigator, but may not receive personal remuneration from this contract.

Under 18 U.S.C. 208, Dr. Berger is prohibited from participating in any matter affecting these interests, unless he receives a waiver. However, as noted above, you have the authority under 18 U.S.C. 208(b)(3) to grant a waiver.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to Dr. Berger that would allow him to participate in the discussions before the Committee.

First, Dr. Berger is a consultant for the Center for Biologics Evaluation and Research from September 1, 2005 to the present and also has served as a member of the Allergenic Products Advisory Committee, CBER from October 1, 2001 to August 31, 2005.

Second, the waiver is also justified because the Committee has a special need for Dr. Berger's service because of his unique expertise, experience, and viewpoints with respect to the issue before the Committee. Dr. Berger is Professor of Pediatrics and Pathology, Division of Immunology and Allergy, Case Western Reserve School of Medicine, Rainbow Babies and Children's Hospital, Cleveland. He is board certified in allergy, immunology and pediatrics and has been recognized for his proficiency in clinical practice of allergy and immunology. He is an expert in primary immune deficiency diseases. He is able to address authoritatively whether measles infection is of current clinical concern for primary immune deficiency patients and discuss the potential clinical impact of diminishing measles antibodies in immune globulin products. Without his clinical immunology expertise, the BPAC will lack the perspectives of a practitioner/investigator needed to formulate science based decisions.

Third, the Office of Blood was contacted and provided a list of approximately 300 CBER SGEs. After review they indicated that there were two SGEs on this list that could substitute for Dr. Berger, both declined due to previous engagements. We, therefore, contacted Dr. Berger and found that he was available. Although there are more clinical immunologists in the country and the world who are experts with autoimmune deficiency disease, no others are current SGEs. Also, Dr. Berger participated in FDA's Workshop on Immune Globulins for Primary Deficiency Diseases: Antibody Specificity, Potency and Testing in April 2007. Such workshop participation is key to the directed discussion before the Committee in Topic 2.

Further, the Federal Advisory Committee Act requires that committee memberships be fairly balanced in terms of the points of view represented and the functions to be performed by the various advisory committee members and Dr. Berger's participation will contribute to the balance of views represented and the diversity of opinions and expertise. The Committee's intended purpose would be significantly impaired if the agency could not call upon experts who have become eminent in their fields, notwithstanding the consulting interests and affiliations they may have acquired as a result of their demonstrated abilities. Dr. Berger's clinical immunology expertise in primary immune deficiency diseases is critical for the Committee's discussion.

For these reasons, I believe that Dr. Berger's participation in the deliberations of the advisory committee will help provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant Melvin Berger, M.D., Ph.D., a waiver that would allow him to participate in the discussions before the August 16, 2007 meeting. I believe that such a

