



MEMORANDUM

DATE: September 15, 2006

TO: Randall Lutter, Ph.D.
Associate Commissioner for
Policy and Planning
Food and Drug Administration

THROUGH: Jenny Slaughter
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

FROM: Igor Cerny, Pharm.D. ISC
Director, Advisors and Consultants Staff
Center for Drug Evaluation and Research

SUBJECT: Conflict of Interest Waiver for Raymond Chung,
M.D.

I am writing to request a waiver for Raymond Chung, M.D., a consultant to the Center for Drug Evaluation and Research, from the conflict of interest prohibitions of 18 U.S.C. §208(a). The appointing official may grant waivers under section 208(b)(3) where "the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved" and where the individual has made a disclosure of the financial interests at issue. We have determined that you are the appointing official for purposes of section 208. Therefore, you have the authority to grant Raymond Chung, M.D., a waiver under 18 U.S.C. §208(b)(3).

Section 208(a) prohibits Federal executive branch employees, including special Government employees, from participating personally and substantially in matters in which the employee, or any other person whose interests are imputed to the employee under 18 U.S.C. §208, has a financial interest. Since Dr. Chung is a special Government employee, he is under a statutory obligation to refrain from participating in an official capacity in any particular matter having a direct and predictable effect on

a financial interest attributable to him, his spouse, minor child, or general partner; an organization or entity for which he serves as an officer, director, trustee, general partner, or employee; and, a person with whom he is negotiating for, or has an arrangement concerning, prospective employment.

Dr. Chung has been asked to participate in all official matters concerning clinical trial design issues in the development of products for the treatment of chronic hepatitis C virus infection, particularly those related to the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up. These matters are coming before the Antiviral Drugs Advisory Committee for consideration and are particular matters of general applicability.

The function of the Antiviral Drugs Advisory Committee, as stated in its Charter, is to review and evaluate available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome, human immunodeficiency virus related illnesses, and other viral, fungal and mycobacterial infections, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Dr. Chung has advised the Food and Drug Administration that he has financial interests that could potentially be affected by his participation in the matters described previously. **Dr. Chung's employer, Massachusetts General Hospital, was awarded research contracts from _____ and _____ to conduct clinical studies of affected products for the treatment of Hepatitis C. Dr. Chung is the principal investigator for the studies but does not receive any personal remuneration or salary support from the contracts.**

Dr. Chung also reports writing about Hepatitis C for _____ educational website.

As a consultant advising the Antiviral Drugs Advisory Committee, Dr. Chung potentially could become involved in matters that could affect his financial interests. Under 18 U.S.C. §208(a), he is prohibited from participating in such matters. However, as noted above, you have the authority

under 18 U.S.C. §208(b)(3) to grant a waiver permitting Dr. Chung to participate in such matters as you deem appropriate.

For the following reasons, I believe that it would be appropriate for you to grant a waiver to Dr. Raymond Chung that would permit him to participate in the matter described previously.

First, although Dr. Chung's employer currently has financial interests in _____ and _____, he himself does not have any financial interest in either the firms or their products. Although the financial interests of an employer impute to the individual under 18 U.S.C. §208, generally there is less likelihood that the judgment of the individual will be affected by the imputed interest of an employer than by a personal financial interest.

Second, Dr. Chung's interests in _____, _____, and _____ are not so substantial as to preclude his participation in the matter described previously. Dr. Chung does not receive any personal remuneration for the studies of _____, _____, and _____, and moderate compensation for writing for _____' website on Hepatitis C Virus (HCV) infections. The funding from _____ and _____ is also not a significant financial interest to the Massachusetts General Hospital since it receives funding from a variety of public, private, and governmental agencies in support of its research activities. In 2005, Massachusetts General Hospital received over \$286 million in research funding from the National Institutes of Health (NIH).

Third, the uniqueness of Dr. Chung's qualification justifies granting this waiver. Dr. Chung is one of the few hepatologist with the requisite expertise to discuss both the treatment of hepatitis C virus (HCV) infections and clinical trial design issues. Dr. Chung has special expertise in the area of HCV and human immunodeficiency virus (HIV) co-infections. Dr. Chung has also participated in clinical trials of antiviral therapies for chronic viral hepatitis as well as human immunodeficiency virus (HIV) infections. Therefore, he understands the elements that are needed to execute a successful clinical trial and is uniquely qualified to address questions regarding these topics. A recusal of Dr. Chung would severely impact the validity of the committee's

discussions on these matters and would be a serious disservice to the public, industry, and academia.

Fourth, the difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee also justifies granting this waiver. Because the universe of hepatologists is small, and that of those involved in the care and clinical evaluation of therapy for hepatitis C virus infections is even smaller, it has been exceedingly difficult to find consultants and committee members, who are knowledgeable about clinical trial design issues in the development of products for the treatment of the chronic HCV infected population, yet have not had any involvement with sponsors in the development of new treatments for this disease. The division feels that only hepatologists have the requisite expertise to discuss both treatment of HCV infections and clinical trial design. A reduction in the number of hepatologists in the committee, therefore, will render much of the discussion useless, and may call into question the validity of any committee recommendations to the Agency.

Fifth, the products that are being studied, _____, _____, and _____, are already approved and marketed for the treatment of HCV infections.

Moreover, this waiver is also justified, in part, because of the general nature of particular matters of general applicability. It is well recognized that particular matters of general applicability pose far less risk of a conflict of interest. Particular matters of general applicability include regulations, legislation, guidelines, points-to-consider, and policies governing classes of organizations, individuals, and products. Particular matters of general applicability do not include particular matters involving specific parties, such as specific grants, contracts, recommendations regarding a specific product, or enforcement matters involving known parties. The committee's discussions of clinical trial design issues such as the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up in the development of products for the treatment of chronic HCV infections will not have a unique and distinct impact on Dr. Chung's financial interest, but rather may affect classes of

similarly situated products and manufacturers to the same extent. While this participation may be covered by section 208, it poses far less risk of bias than participation in matters that relate specifically to a particular firm or organization in which Dr. Chung has an interest.

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 advisory committee. Also, the committee's intended purpose would be significantly impaired if the Agency could not call upon experts who have become eminent in their fields, notwithstanding the financial interests and affiliations they may have acquired as a result of their demonstrated abilities. Raymond Chung, M.D., is Assistant Professor of Medicine at the Harvard Medical School, and the Director of the Liver Transplant Program, Hepatology Clinic, and the Center for Liver Disorders at the Massachusetts General Hospital. In addition to his clinical duties at the hospital, Dr. Chung has participated in clinical trials of antiviral therapies for chronic viral hepatitis as well as HIV, and understands the elements necessary to execute a successful clinical trial. Therefore he is uniquely qualified to address questions regarding this topic. Dr. Chung is also a member of several professional societies, including the American Association for the Study of Liver Diseases (AASLD), the American Society for Transplantation, the American College of Physicians, and the American College of Gastroenterology. Lastly, Dr. Chung is a member of editorial boards for several prestigious medical journals, including the *New England Journal of Medicine*, *Journal of the American Medical Association*, *Journal of Medical Virology*, *Gastroenterology*, *Hepatology*, *Proceedings of the National Academy of Sciences*, and *Lancet*. I believe that Dr. Chung's participation will help provide a foundation for developing advice and recommendations that are fair and comprehensive.

Accordingly, I recommend that you grant Raymond Chung, M.D., a waiver that would allow him to participate in all official matters concerning clinical trial design issues in the development of products for the treatment of chronic hepatitis C virus infection, particularly those related to the identification of appropriate control arms, populations for study, endpoints, and long-term follow-up. I believe that

such a waiver is appropriate because in this case, the need for the services of Raymond Chung, M.D., outweighs the potential for a conflict of interest created by the financial interests attributable to him.

CONCURRENCE:

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Jenny Slaughter
Director, Ethics and Integrity Staff
Office of Management Programs
Office of Management

9/26/06
Date

DECISION:

 X Waiver granted based on my determination, made in accordance with section 18 U.S.C. §208(b)(3), that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest attributable to the individual.

 Waiver denied.

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Randall Lutter, Ph.D.
Associate Commissioner for
Policy and Planning
Food and Drug Administration

9/28/06
Date