



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration  
Rockville MD 20857

DATE: September 19, 2007

TO: Randall W. Lutter, Ph.D.  
Deputy Commissioner for Policy  
Food and Drug Administration

THROUGH: Vincent Tolino       /S/      09/20/07        
Director, Ethics and Integrity Staff  
Office of Management Programs  
Office of Management

FROM: Kathleen L. Walker       /S/      09/19/07        
Chief, Integrity, Committee and Conference Management Branch  
Division of Ethics and Management Operations, OMO  
Center for Devices and Radiological Health

SUBJECT: 208(b)(3) Conflict of Interest Waiver for Judah Z. Weinberger, M.D., Ph.D.

I am writing to request a waiver for Judah Z. Weinberger, M.D., Ph.D., a temporary voting member of the Circulatory System Devices Panel of FDA's Medical Devices Advisory Committee, from the conflict of interest prohibitions of 18 U.S.C. §208(a). 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. We have determined that you are the appointing official for purposes of section 208. Therefore, you have the authority to grant Dr. Weinberger 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 the employee or his employer has a financial interest. Since Dr. Weinberger is a special Government employee, he 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 his employer.

Dr. Weinberger has been asked to participate in the Panel’s discussion regarding a premarket approval application (PMA) for the *Endeavor Zotarolimus-Eluting Coronary Stent System*, submitted by Medtronic Vascular (parent: Medtronic, Inc.). This system is indicated for improving coronary luminal diameter in patients with ischemic heart disease due to de novo lesions of length  $\leq 27$ mm in native coronary arteries with reference vessel diameters of  $\geq 2.5$ mm to  $\leq 3.5$  mm.

This matter is coming before a meeting of the Circulatory System Devices Panel of FDA's Medical Devices Advisory Committee. This issue is a particular matter involving specific parties.

The function of the Committee, as stated in its Charter, is to review and evaluate available data concerning the safety and effectiveness of marketed and investigational devices and advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories; recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; advise on any possible risks to health associated with the use of devices; advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; review classification as appropriate; recommend exemption to certain devices from the application of portions of the Act; advise on the necessity to ban a device; and respond to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Dr. Weinberger has advised the Food and Drug Administration (FDA) that his employer has a financial interest which could potentially be affected by his participation in the matter described above. His institute, Columbia University Medical Center (CUMC), has been identified as a clinical site for the ENDEAVOR study. Although Dr. Weinberger is identified as a co-investigator; he has no personal or financial involvement with the trial. Dr. Weinberger is the Director of Interventional Cardiology within the Department of Medicine and Associate Professor of Medicine (Pharmacology). He has no managerial responsibilities over the principal investigator, [-----].

The Office of Device Evaluation within the Center for Devices and Radiological Health provided the following relevant study data:

Total number of sites involved with the ENDEAVOR study: [---]  
Total number of patients enrolled in the trial: [----] (ENDEAVOR [---]; Control: [---])  
Total number of patients enrolled at CUMC: [---]  
Date of first study enrollment: [-----]  
Date of last study enrollment: [-----]  
Amount to institute: [-----]  
[-----]

As a temporary voting member of the Circulatory System Devices Panel of FDA's Medical Devices Advisory Committee, Dr. Weinberger potentially could become involved in matters that could affect his financial interests. Under section 208, 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. Weinberger 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. Weinberger that would allow him to participate fully in the matter described because the need for his services greatly outweighs the conflict of interest created by this financial interest.

First, although Dr. Weinberger's institution was involved in the sponsor's trial, he had no direct, personal involvement and received no compensation. The fact that this financial interest is imputed to him from his employer should lessen any potential conflict the interest may present.

Second, Dr. Weinberger's institution contributed a statistically insignificant portion of the trial data with only [-----] of the total patient enrollment. This limitation should help to mitigate any concern that the SGE's impartiality might be called into question during Panel deliberations.

Third, there are over 20 firms that manufacture, market or plan to develop competing products or technologies for the same indication as the subject PMA device. The need for this individual's expertise outweighs the large market availability of similar products being considered.

Moreover, 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.

Dr. Weinberger is Director of Interventional Cardiology, Department of Medicine and Associate Professor of Medicine (Pharmacology) at Columbia University. He is a nationally recognized expert, with diverse clinical and research experience and is well-versed on the current data concerning the use of drug-eluting stents (DES). His extensive clinical experience and knowledge of DES makes him an invaluable expert for this Panel meeting. As an active participant during the December 7 and 8, 2006 Circulatory System Devices Panel meeting, Dr. Weinberger provided an important perspective as one of only two interventional cardiologists in attendance to discuss general issues surrounding drug-eluting stents. Given the number of presentations and the breadth of the issues discussed at this previous two-day meeting, we believe it critical to have more than one cardiologist with this specific background available for the evaluation of the current PMA.

Drug-eluting stent clinical trials are significantly larger than many device trials in both the number of patients enrolled and in the number of investigational sites involved. The subject application involves two studies conducted in the United States which enrolled 89 investigational study sites. The American College of Cardiology reports a total of 135 institutions with training programs in interventional cardiology. Although there are many qualified interventional cardiologists in the U.S., those that maintain faculty appointments at accredited interventional cardiology fellowship training programs are most likely to possess background skills that are highly desirable for Panel membership. These skills include ongoing or past participation in basic science and clinical research, knowledge of standards of practice reflected in current guidelines, and a high level of patient care and procedural expertise needed to maintain institutional accreditation. Given the large number of investigational sites utilized in trials conducted by the current PMA sponsor and its competitors, finding potential Panel members with appropriate expertise who are not employed

