

Declaration of Mitchell S. Wortzman, Ph.D.

Mitchell S. Wortzman, Ph.D. makes the following statement:

1. I am the Executive Vice President and Chief Scientific Officer of Medicis, a pharmaceutical company focusing primarily on the treatment of dermatological and podiatric conditions and aesthetic medicine. I have held this position since July of 2003. Prior to that I have worked in various capacities associated with research and development at this company since 1997. Prior to my experience at Medicis I worked in similar capacities at the Neutrogena Corporation. I obtained my Ph.D. degree at the University of Southern California in Cellular and Molecular Biology in 1978. A fuller explanation of my background and experience appears in my curriculum vitae, which is attached to this declaration as Exhibit A.

2. I submit this declaration in support of a citizen petition submitted by Medicis that asks FDA to reconsider a policy position that has the effect of discouraging innovation in a particular type of pharmaceuticals. Specifically, FDA has interpreted the Federal Food, Drug, and Cosmetic Act in such a way as to remove the potential for market exclusivity and listing of patents for any combination drug product that contains, as one of its active ingredients, an antibiotic ingredient that was part of a drug covered by an application for FDA approval submitted before November 21, 1997 (a “pre-1997 antibiotic”). One effect of this FDA policy is to deny market exclusivity and patent listing benefits to the Medicis drug Ziana™, which is a combination of tretinoin and clindamycin, because clindamycin is a pre-1997 antibiotic. My objection to the FDA policy is that it warps, for no rational reason, the decision making for companies such as mine as to what drugs to develop in the future. This is particularly a concern because discouraging development of combinations involving pre-1997 antibiotics could have

the effect of discouraging the development of solutions to problems of antibiotic resistance, among others.

3. My particular area of expertise is dermatology. With respect to products used to treat dermatological conditions, there is research suggesting that certain ingredients, such as the tretinoin found in Ziana™ and certain other compounds involving zinc, when administered in combination with antibiotics, including pre-1997 antibiotics, can contribute significantly to the potency of the antibiotics. There is evidence to suggest that these added compounds have their effect by increasing the ability of the antibiotic to penetrate the bacterial cells. An example of research demonstrating the synergistic effect of antibiotic and non-antibiotic active ingredients in treating dermatologic conditions is Leyden, J. J., Marples, R. R., Mills, O.H., Kligman, A.M., South Med. J. 67 20-25 (1974). A copy of this report is attached to this declaration as exhibit B.

4. When we speak of antibiotic resistance, it should be recognized that the issue is not one of a bacterial cell ever becoming totally resistant to a particular antibiotic. Instead, the question is one of decreased sensitivity, *e.g.* how much of the antibiotic is needed to kill the bacteria. Where an increase in penetration can be achieved by a combination of the antibiotic with another substance, as is been shown to be the case with respect to tretinoin and other ingredients, then the effective dose of the antibiotic at the site of action within the bacteria is effectively greater and the antibiotic becomes more potent. In some cases, therefore, an antibiotic to which resistance has been seen can, because of combination therapy, once again be effective in the treatment of bacterial disease.

5. Another type of combination drug that would potentially be very useful in treating dermatological diseases, but whose development would be discouraged by the FDA policy, is a combination of a newer (non-pre-1997 antibiotic) with a pre-1997 antibiotic. It is often the case that the co-administration of two antibiotic ingredients that act on bacteria in different ways can have, in effect, a synergistic effect, producing an effective drug at lower doses than would otherwise be required or in situations in which neither of the antibiotic ingredients, alone, would be successful at reasonable doses. Thus, for example, if one antibiotic works through inhibition of protein synthesis and another through stopping cell wall manufacture, neither might be successful by itself but together they could be potent therapy.

6. The fact that FDA does classify as antibiotics drugs that have effects beyond their antimicrobial effects makes this issue even more important. It is known that some antibiotics have, for example, anti-inflammatory effects. Thus FDA's policy would provide disincentives to development of combination products in which such anti-inflammatory or other effects of pre-1997 antibiotics could be utilized.

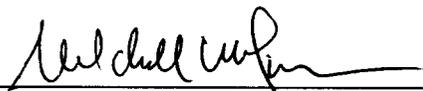
7. As noted, my area of specialization has been dermatology. I am aware, however, that research has been reported in other areas of the potential effectiveness of both the combination of non-antibiotic ingredients with pre-1997 antibiotic ingredients to combat antibiotic resistance and the combination of post-1997 and pre-1997 antibiotics for the same purpose. Attached as Exhibits C and D to this statement are lay reports of this type of research.

8. In my capacity as Executive Vice President and Chief Scientific Officer of Medicis, I am often actively involved in decisions as to which products our company will

develop. Like all other companies, we have limited resources, so decisions must be made as to which products are most likely to present viable investments. One aspect of this analysis, which is my initial focus, is the potential for the drug to be developed successfully and to benefit patients. Another important part of the analysis, however, is whether the very significant investment we would need to make in developing a drug could be expected to be recouped through marketing prior to the time that the drug would face generic competition. Key to that analysis are questions of whether the drug could earn market exclusivity and whether any patents for the drug could be listed in the Orange Book, so as to provide at least a potential period of 30 months delay in marketing of any generic product while patent litigation concerning that generic product goes forward. If the answer is that we would be in position of spending many millions of dollars to develop a product, only to find that the product, because market exclusivity and patent listing protections do not apply, could quickly lose its market because of generic competition, we cannot reasonably justify to our shareholders making an investment in such a product. Thus, the very real effect of an FDA decision not to reconsider its policy with respect to combinations of products that contain pre-1997 antibiotic ingredients is to actively discourage the development of potentially important pharmaceuticals.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: 16 April 2007



Mitchell S. Wortzman, Ph.D.