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. (the "Respondent") and the medicine "Soliris"

FURTHER AMENDED NOTICE OF APPEARANCE

TAKE NOTICE THAT Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Health ("the Minister of Health for British Columbia") intends to appear and make representations with respect to this matter on the following basis:

1. The Minister of Health for British Columbia, on his own behalf and on behalf of the Ministers of Health for the Provinces of Ontario, Manitoba and Newfoundland and Labrador (collectively, "the Ministers of Health"), intends to make representations supporting the proposed Orders of the Board on the basis set out by Board Staff in the Statement of Allegations of Board Staff ("the Statement of Allegations"), but requesting that the Board order, pursuant to section 83 of the *Patent Act,* that:
   (a) the Respondent reduce the price of Soliris to a price that does not exceed the lowest price for Soliris among all comparator countries; and
   (b) the Respondent offset cumulative excess revenues that it has received by paying to the federal government an amount equal to the excess revenues the Board estimates that the Respondent has generated from the sale of Soliris at an excessive price, with the Board to use the lowest price for Soliris among all comparator countries as the basis for the calculation.

2. The Ministers of Health of Ontario, Manitoba and Newfoundland and Labrador have consented to the Minister of Health for British Columbia making representations on

behalf of the Ministers of Health. Copies of the consent letters are attached to ~~this~~ the Amended Notice of Appearance ~~copies of the consent letters~~.

3. A concise statement of the representations that the Ministers of Health intend to make and the material facts on which the Ministers of Health are relying, and a list of the documents that may be in used in evidence to support the material facts on which the Ministers of Health are relying, are set out in the attached Appendix A. ~~The Ministers of Health intend to rely upon the material facts set out in the Statement of Allegations, and upon the documents noted in the List of Attachments to the Statement of Allegations.~~

~~4. The Ministers of Health also intend to rely upon the Affidavit of Eric Lun, sworn April 1, 2015 and filed herein, and specifically upon the following facts as stated in the Affidavit of Eric Lun:~~

~~(a) the process by which provincial governments review medicines such as Soliris for potential reimbursement;~~

~~(b) the cost of Soliris in comparison to other publicly-funded medicines;~~

~~(c) the importance of the public list price of a medicine in relation to negotiations between provincial governments and suppliers and in relation to other reimbursement policies;~~

~~(d) the recommendations made by the Common Drug Review in relation to the reimbursement of Soliris by provincial governments.~~

~~5. The Ministers of Health also intend to rely upon the following documents attached as exhibits to the Affidavit of Eric Lun:~~

~~(a) Canadian Expert Drug Advisory Committee Recommendation on Soliris for Indication of Paroxysmal Nocturnal Hemoglobinuria;~~

~~(b) Canadian Drug Expert Committee Recommendation on Soliris for Indication of Atypical Hemolytic Uremic Syndrome;~~

~~(c) Common Drug Review Submission Status summary.~~

~~6. The Ministers of Health may also rely upon any documents submitted by a participant to the hearing, and any affidavits filed in the proceeding.~~

4.~~7~~. Service of any documents in this proceeding may be effected upon the Ministers of Health by serving:

Ministry of Justice, Legal Services Branch
PO Box 9280 Stn Prov Govt
1001 Douglas Street
Victoria, BC V8W 9J7

Attention: Sharna Kraitberg
Phone: 250-356-8931
Fax: 250-356-8992
E-mail: sharna.kraitberg@gov.bc.ca

with the Minister of Health for British Columbia consenting to accept service of any documents in this proceeding on behalf of the Ministers of Health, and the Minister of Health for British Columbia agreeing to distribute any documents served upon the Minister of Health for British Columbia to the Ministers of Health of Ontario, Manitoba and Newfoundland and Labrador, as required.

5.~~8~~. The Ministers of Health request that participation in the hearing (and other related meetings) be permissible by teleconference or videoconference.

DATED at Victoria, British Columbia, this 26th day of June, 2015.

Original signature redacted

Sharna Kraitberg, Counsel for the Minister of Health for British Columbia

TO: The Secretary of the Patented Medicine Prices Review Board

Standard Life Centre
333 Laurier Avenue West
Suite 1400
Ottawa, Ontario K1P 1C1

AND TO: Christopher Morris and David Migicovsky
Counsel for Board Staff

Perley-Robertson Hill & McDouglas LLP
340 Albert Street
Suite 1400
Ottawa, ON K1R 7Y6

AND TO: Parul Shah
Legal Counsel PMPRB

Patented Medicine Prices Review Board
Legal Services Branch
Standard Life Centre
333 Laurier Avenue West
Suite 1400
Ottawa, Ontario K1P 1C1

AND TO: Malcolm N. Ruby and Alan West
Counsel for the Respondent

Gowling LaFleur Henderson LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

APPENDIX A

A. CONCISE STATEMENT OF REPRESENTATIONS THAT THE MINISTERS OF HEALTH INTEND TO MAKE AND THE MATERIALS FACTS ON WHICH THE MINISTERS OF HEALTH ARE RELYING:

1. The reason that the Ministers of Health seek to participate in this matter is to provide the Board with information about public funding of medicines in general and eculizumab (Soliris) in particular, and to request that the Board order that the Respondent reduce the price of Soliris to match the lowest price for Soliris among all comparator countries, both prospectively and retroactively.

2. The Ministry of Health of British Columbia operates the PharmaCare Program, which provides financial assistance to eligible British Columbia residents for the purchase of certain eligible prescription drugs and designated medical supplies.

3. The Ministry of Health also provides financial assistance on an exceptional basis for the purchase of the drug product Soliris to certain individuals in British Columbia who have been diagnosed with Paroxysmal Nocturnal Hemoglobinuria ("PNH").

4. The provincial governments of Ontario, Manitoba and Newfoundland and Labrador also provide financial assistance for the purchase of Soliris, either through their public drug plans or through other public funding mechanisms.

5. At the Canadian list price of $6,742.50 per 300 mg vial and using recommended doses, the annual cost of Soliris for treatment of PNH is approximately $540,000 in the first year of treatment and $526,000 in subsequent years per patient. At list price, the cost of Soliris for treatment of Atypical Hemolytic Uremic Syndrome ("aHUS") is more than $700,000 per year per patient, based on recommended doses. As these medications may be used on a long-term basis (or potentially for the rest of a patient's life), the cumulative drug costs at list prices for 5, 10 or 20 years of therapy for a single PNH patient may be more than $2.5 million, $5 million, or $10 million, respectively.

6. The cost of Soliris is significantly higher than most other drugs funded by provincial governments for other diseases. This results in an opportunity cost, such that the funding of one patient on Soliris will result in fewer dollars for numerous patients with other diseases. By way of illustration, in British Columbia, the average annual PharmaCare drug ingredient expenditure per beneficiary is approximately $950 (based on PharmaCare data in FY 12/13 during which 722 other unique drugs were covered: http://www.health.gov.bc.ca/pharmacare/pdf/PCareTrends2012-13.pdf). On an opportunity cost basis, this means that the expenditure used to fund Soliris for a single PNH patient could have been used to provide drug coverage for more than 550 other PharmaCare beneficiaries, on average.

7. Even when compared to other high cost drugs funded by provincial governments for other diseases, the cost of Soliris is significantly more expensive. The following examples of certain other drugs considered high cost and funded by the Ministry of Health (the stated drugs costs are based upon list cost and do not include other mark ups) are illustrative of this cost differential:

   (a) Infliximab (Remicade) costs up to $25,000 per year per patient. Infliximab is used for the long-term symptomatic treatment of various rheumatic or gastrointestinal disorders.

   (b) Sofosbuvir-ledipasvir (Harvoni) costs about $70,000 per patient for a 12-week treatment course and is used as a potentially curative treatment for chronic hepatitis C infection.

   (c) Ivacaftor (Kalydeco) costs about $306,000 per year per patient and is used for the long-term symptomatic treatment of a rare form of cystic fibrosis, and like Soliris is funded on an exceptional case basis in BC.

   (d) Imiglucerase (Cerezyme) costs about $350,000 per year per patient and is used for the long-term symptomatic treatment of the rare Gaucher's disease, and like Soliris is funded on an exceptional case basis in BC.

8. The provincial governments in Canada are major payors for Soliris for the treatment of PNH, and therefore the provincial governments have a critically vested interest in the price of this drug product.

9. The Common Drug Review (CDR) reviews drugs for potential reimbursement by participating jurisdictions. In 2010, the CDR's advisory committee, the Canadian Expert Drug Advisory Committee ("CEDAC"), recommended that Soliris not be listed at the submitted price for treatment of PNH, stating that, "Eculizumab would not be considered cost-effective without a substantial reduction in the submitted price."

10. In agreeing to consider funding Soliris through government funding, the provinces and territories completed national negotiations for a confidential price for the product for its use in PNH. To secure confidential lower prices, participating jurisdictions each complete their own confidential product listing agreements with the manufacturer and therefore cannot disclose the terms or conditions of such agreements. However, the list price of Soliris is referenced in the negotiations in order to determine overall value. Therefore, an excessive list price results in provincial governments being inherently disadvantaged in the listing negotiations and in the subsequent ongoing funding of Soliris purchases.

11. Because public government payors in Canada have negotiated a price lower than the list price for PNH, it might be argued that the effective price paid in Canada by government payors is "non-excessive" relative to international comparator prices. However, it should be noted that given the excessive pricing for Soliris, governments in other countries, including drug plans in the United Kingdom, Ireland and New Zealand, have also resorted to negotiations with the Respondent. The Respondent would be the best source to confirm other comparator countries with whom it has negotiated lower non-transparent prices. The following media articles (links below) provide some indication of the countries where such negotiations have been completed:

http://www.pharmaphorum.com/articles/soliris-the-worlds-most-expensive-drug-will-nice-judge-it-affordable, http://www.irishtimes.com/news/health/how-can-the-hse-put-a-price-on-your-life-1.2053192, http://tvnz.co.nz/national-news/pharmac-willing-negotiate-life-saving-treatment-5324999

12. The public list price is also an important reference point for other public drug coverage policies. In addition to the drug ingredient cost, provincial governments also pay mark-ups or other professional fees to pharmacies as part of their remuneration to supply drugs to patients. Currently mark-up fees payable by provincial governments are calculated as a percentage of the drug ingredient costs based upon the public list price. The fees are typically in the 6-10% range, but may be as high as 30% (Yukon). In the case of Soliris, a mark-up fee of 8% would add more than $42,000 annually to the overall cost of the drug for each PNH patient funded. To assist in managing the potential amount of the mark-up, jurisdictions may use various strategies to avoid or minimize paying the mark-up on Soliris, such as through capitation policies.

13. In 2013, the CDR's advisory committee, now known as the Canadian Drug Expert Committee ("CDEC"), recommended that Soliris not be listed for treatment of aHUS. In making those recommendations, the Committee stated that the "two uncontrolled prospective studies had several important limitations. Therefore the clinical benefit of eculizumab could not be adequately established." The public drug plans are currently seeking advice from CDEC regarding the use of Soliris in aHUS.

14. Because of the 2013 CDEC "do not list" recommendation for aHUS, the provinces and territories have not negotiated for a confidential lower price for use of Soliris in aHUS. As such, if a province or territory chooses to cover a patient for an indication other than PNH on an exceptional basis, that jurisdiction will be required to pay the full list price of the product (unless some other agreement has been made between that jurisdiction and the manufacturer).

15. Although provincial governments pay for a significant proportion of Soliris treatments, there are other payors as well – hospitals (which may provide funding independently of public drug plans), drug benefit insurers and private payors. These

payors are not able to benefit from any negotiated agreements that the provincial governments may have with the Respondent. These other payors would need to pay the full list price of the product unless there was an agreement in place between the payor and the Respondent. For example, a Vancouver hospital pays the full list price of the product plus 5% mark-up for a patient; this was a funding decision made independently from the Ministry of Health.

16. In addition to the above, the Ministers of Health rely on the material facts set out in the Statement of Allegations.

17. The Ministers of Health respectfully request that in making its decision, the Board consider the significant challenges that provincial governments face as a result of the pricing of Soliris.

18. The Ministers of Health respectfully request that the Board:

(a) order the Respondent to reduce the price of Soliris to match the lowest price for Soliris among all comparator countries effective within 30 days of the date of the Board's Order, and

(b) order that the Respondent offset the cumulative revenues it has received during the period of January 1, 2012 to the effective date of the Board's Order noted in (a) by making a payment to Her Majesty in Right of Canada, within 30 days of the Board's order, in an amount that is equal to the excess revenues the Board estimates that the Respondent has generated from the sale of Soliris at an excessive price, using the lowest price for Soliris among all comparator countries as the reference for the appropriate price for the product.

B. LIST OF THE DOCUMENTS THAT MAY BE USED IN EVIDENCE TO SUPPORT THE MATERIAL FACTS ON WHICH THE MINISTERS OF HEALTH ARE RELYING:

1. The documents noted in the List of Attachments to the Statement of Allegations.
2. The 2010 recommendation of CEDAC that Soliris not be listed at the submitted price for treatment of PNH.

3. The 2013 recommendation of CDEC that Soliris not be listed for the treatment of aHUS.

4. The Ministers of Health may also rely upon any documents submitted by a participant to the hearing, and any affidavits filed in the proceeding.