IN THE MATTER OF the *Patent Act* R.S.C. 1985, c. P-4, as amended

AND IN THE MATTER OF Eli Lilly Canada Inc. (the "Respondent") and the medicine "Strattera"

NOTICE OF HEARING

TAKE NOTICE that the Patented Medicine Prices Review Board (the "Board") will hold a hearing at its offices in the Standard Life Centre, 333 Laurier Avenue West, 18th Floor, Ottawa, Ontario, commencing on April 11, 2007, at 10:00 a.m. A pre-hearing conference has also been scheduled for February 22, 2007, at the Board's offices, starting at 9:30 a.m.

A. Purpose of the Hearing

1. The purpose of the hearing is to determine whether, under sections 83 and 85 of the *Patent Act* (the "Act"), the Respondent is selling or has sold the medicine known as Strattera in any market in Canada at a price that, in the Board's opinion, is or was excessive and if so, what order, if any, should be made.

B. Power of Board With Respect to Excessive Prices

2. In the event that the Board finds that the Respondent is selling Strattera in any market in Canada at a price that, in the Board's opinion, is excessive, the Board may, by order, direct the Respondent to cause the maximum price at which the Respondent sells Strattera in that market to be reduced to such level as the Board considers not to be excessive and as is specified in the order.

3. In addition, in the event that the Board finds that the Respondent has, while a patentee, sold Strattera in any market in Canada at a price that, in the Board's opinion was excessive, the Board may, by order, direct the Respondent to do any one or more of the following things as will, in the Board's opinion, offset the amount of the excess revenue determined by it to have been derived by the Respondent from the sale of Strattera:

a) reduce the price at which the Respondent sells the medicine in any market in Canada, to such extent and for such period as is specified in the order;

b) reduce the price at which the Respondent sells one other medicine to which a patented invention of the Respondent pertains in any market in Canada, to such extent and for such period as is specified in the order;

c) pay to Her Majesty in right of Canada an amount specified in the order.

4. In addition, in the event that the Board, having regard to the extent and duration of the sales of Strattera at an excessive price, is of the opinion that the Respondent has engaged in a policy of selling Strattera at an excessive price, the Board may, by order, in lieu of any order it may make pursuant to paragraph 3 hereof, direct the Respondent to do any one or more of the things referred to in that paragraph as will, in the Board's opinion, offset not more than twice the amount of excess revenue estimated by it to have been derived by the Respondent from the sale of Strattera at an excessive price.

C. Grounds for the Proposed Orders and the Material Facts

5. Board Staff has conducted an investigation into the price of Strattera (atomoxetine hydrochloride), a patented medicine sold in Canada by the Respondent in capsules of 10 mg, 18 mg, 25 mg, 40 mg and 60 mg (DINs 02262800, 02262819, 02262827, 02262835 and 02262843). The material facts relied upon by Board Staff for the purpose of the Notice of Hearing and the order sought from the Board are described in the Statement of Allegations of Board Staff dated December 5, 2006, a copy of which is attached.

D. Procedure

6. The Board will conduct this proceeding in accordance with the proposed Patented Medicine Prices Review Board Rules ("Rules"), unless otherwise provided in this Notice of Hearing or in any subsequent communication from the Board.

7. The Board will conduct the hearing in public unless the Board is satisfied on representations made by the Respondent that specific, direct and substantial harm would be caused to the Respondent by the disclosure of information or documents at a public hearing, in which case the hearing or any part thereof may, at the discretion of the Board, be held in private.

8. Parties are required to file five (5) paper copies of documents that are required to be filed in accordance with the Board's Rules. In addition, all parties are requested to provide, on compact disc(s) or by email, converted (i.e., not scanned) Portable Document Format (pdf) files of any documents they create or that they acquire in electronic form and scanned pdf files of any documents that cannot be converted.

E. Response

9. If the Respondent wishes to oppose the proposed order, the Respondent shall, no later than January 15, 2007, file with the Board and serve upon all other parties, in accordance with section 18 of the Rules, a response dated and signed by the Respondent. Take notice that if the Respondent has not filed a response by January 15, 2007, or within such longer period as the Board may by order provide, the Board may make such findings and orders pursuant to section 83 of the Act as it deems appropriate.

F. Reply

10. If Board Staff wishes to reply to the Response, Board Staff shall, no later than January 29, 2007, file with the Board and serve its reply upon the Respondent and all other parties.

G. Intervention

11. Ministers referred to in subsection 86(2) of the Act ("Ministers"), who intend to appear and make representations before the Board shall, in accordance with section 20 of the Rules, file with the Board and serve on the Respondent and all other Ministers a statement of intervention, dated and signed by the said Ministers, on or before January 15, 2007.

12. Any person other than the Respondent or Ministers who claims an interest in the subject matter of this proceeding may apply to the Board, in accordance with section 19 of the Rules, for leave to intervene in the proceeding, on or before January 19, 2007.

13. The Respondent and Ministers may make representations with respect to any application to intervene by filing their representations with the Board and serving a copy thereof on the Applicant on or before January 26, 2007.

H. Pre-hearing Conference

14. A pre-hearing conference is scheduled to commence at 9:30 a.m. on February 22, 2007, at the Board's offices, for the purpose of, inter alia, the following:

a) receiving and considering representations and deciding whether disclosure at the hearing of information or documents would cause specific, direct and substantial harm to the Respondent and, if so, determining whether the hearing or any part thereof shall be held in private and the procedure to be followed at such hearing pursuant to subsection 86(1) of the Act;

b) determining applications for leave to intervene in the proceeding;

c) determining the application of subsection 87(1) and related provisions of the Act and the Rules to information or documents, including the attachments referenced in the Statement of Allegations of Board Staff;

d) determining requests for the confidentiality of any other document to be filed in the proceeding;

e) determining matters relating to the production of documents;

f) determining motions respecting interlocutory or preliminary matters;

g) determining whether written submissions may be made by parties in addition to or in lieu of oral evidence or representations at the hearing; and

h) determining any other matter provided for under section 21 of the Rules.

15. Parties participating in the pre-hearing conference shall file and serve on all other parties on or before February 16, 2007, a memorandum providing:

a) a concise statement of any issue that the party intends to raise at the pre-hearing conference together with, for each issue, an identification of the decision sought by the party and the submissions of the party in support of its position;

b) an identification of all documents and information that the party requests to be treated as confidential or privileged in the proceeding together with the submissions of the party in support of each request;

c) any application a party intends to make pursuant to subsection 86(1) of the Act together with the party's submissions relating thereto;

d) any general submissions the party wishes to make respecting the conduct of the proceeding; and

e) the official language or languages that the party wishes to use.

I. Confidentiality Requests

16. Any claim for confidentiality, made in connection with a document filed with the Board or requested by the Board or any party, shall be filed with the Board and served on all parties and accompanied by the reasons therefore, and where it is asserted that specific, direct and substantial harm would be caused to the party claiming

confidentiality, the party's claim shall contain sufficient details as to explain fully the nature and extent of such harm.

17. A party claiming confidentiality in connection with a document shall indicate whether the party objects to providing an abridged version of the document to other parties and, if so, shall state the party's reasons for the objection.

18. Any party wishing the disclosure of a document filed with the Board in relation to which there has been a claim for confidentiality may file with the Board and serve on all parties within seven days of being served with the claim for confidentiality:

a) a request for such disclosure setting out the reasons therefore; and

b) any material in support of the reasons for public disclosure.

19. A party claiming confidentiality may file a reply with the Board and serve a copy thereof on the party requesting public disclosure within seven days of being served with the request for disclosure.

J. Preliminary Matters

20. Any preliminary matter proposed to be determined by way of an order of the Board shall be dealt with at the pre-hearing conference and shall be commenced by a notice of motion filed with the Board, in accordance with section 26 of the Rules, and served on all parties on or before February 1, 2007.

K. List of Supporting Documents

- ✓ Statement of Allegations of Board Staff dated December 5, 2006, and Attachments
- ✓ *Patent Act* (sections 79 to 103)
- ✓ *Patented Medicines Regulations, 1994*
- ✓ Patented Medicine Prices Review Board Rules (Proposed)
- ✓ Compendium of Guidelines, Policies and Procedures

DATED at Ottawa, this December 15, 2006

Original signed by

_____

Sylvie Dupont
Secretary of the Board

All information requests and/or correspondence should be addressed to:

The Secretary of the Patented Medicine Prices Review Board
Standard Life Centre
333 Laurier Avenue West
Suite 1400
Ottawa, Ontario
K1P 1C1

Toll-free number: 1-877-861-2350
Direct line: (613) 954-8299
Fax: (613) 952-7626

E-mail: sdupont@pmprb-cepmb.gc.ca

RESPONDENT

TO: Eli Lilly Canada Inc.
3650 Danforth Avenue,
Toronto, Ontario
M1N 2E8

AND TO:

MINISTERS

AND TO: The Honourable Maxime Bernier, P.C., M.P.
Minister of Industry
235 Queen Street
11th floor
Ottawa, Ontario
K1A 0H5

AND TO: The Ministers responsible for health in each province and territory:

The Honourable George Abbott, M.L.A.
Minister of Health
Province of British Columbia
Room 337, Parliament Buildings
Victoria, British Columbia
V8V 1X4

The Honourable Iris Evans, M.L.A.
Minister of Health and Wellness
Province of Alberta
Room 323, Legislature Building
Edmonton, Alberta
T5K 2B6

The Honourable Len Taylor, M.L.A.
Minister of Health
Minister Responsible for Seniors
Province of Saskatchewan
Room 361, Legislative Building
Regina, Saskatchewan
S4S 0B3

The Honourable Theresa Oswald, M.L.A.
Minister of Health
Province of Manitoba
Room 302, Legislative Building
450 Broadway
Winnipeg, Manitoba
R3C 0V8

The Honourable George Smitherman, M.P.P.
Minister of Health and Long-Term Care
Province of Ontario
Queen's Park
Hepburn Block, 10th Floor
80 Grosvenor Street
Toronto, Ontario
M7A 2C4

D^{r} Philippe Couillard
Ministre de la Santé et des Services sociaux
Président du Comité ministériel du développement social
Gouvernement du Québec
Édifice Catherine-de-Longpré
1075, chemin Sainte-Foy, 15^{e} étage
Québec (Québec)
G1S 2M1

The Honourable Michael Murphy, M.L.A.
Minister of Health and Attorney General
Province of New Brunswick
7th Floor, Carleton Place
520 King Street, P.O. Box 5100
Fredericton, New Brunswick
E3B 5G8

The Honourable Chris D'Entremont, M.L.A.
Minister of Health
Province of Nova Scotia
4th Floor, Joseph Howe Building
1690 Hollis Street, P.O. Box 488
Halifax, Nova Scotia
B3J 2R8

The Honourable Chester Gillan, M.L.A.
Minister of Health and Social Services
Province of Prince Edward Island
2nd Floor, Jones Building
11 Kent Street, P.O. Box 2000
Charlottetown, P.E.I.
C1A 7N8

The Honourable Tom Osborne, M.H.A.
Minister of Health and Community Services
Minister responsible for Francophone Affairs
Government of Newfoundland and Labrador
Confederation Building, West Block
Prince Philip Drive, P.O. Box 8700
St. John's, Newfoundland and Labrador
A1B 4J6

The Honourable Brad Cathers, M.L.A.
Minister of Health and Social Services
Minister responsible for Yukon Workers'
Compensation Health & Safety Board
Government of Yukon Territory
2071 - 2nd Avenue, P.O. Box 2073
Yukon Government Administration Building
Main Floor
Whitehorse, Yukon
Y1A 2C6

The Honourable J. Michael Miltenberger, M.L.A.
Minister of Health and Social Services
Minister Responsible for Seniors, the Homeless, and
Persons with Disabilities
Government of the Northwest Territories
Legislative Assembly, P.O. Box 1320
Yellowknife, NWT
X1A 2L9

The Honourable Leona Aglukkaq, M.L.A.
Minister of Health and Social Services
Minister Responsible for Status of Women
Government of Nunavut
P.O. Box 2410
Iqaluit, Nunavut
X0A 0H0