



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 Apotex Inc. and the medicine
"Apo-Salvent CFC Free"**

ORDER

FURTHER TO the Statement of Allegations dated June 17, 2008 and filed by Board Staff seeking a declaration under sections 83 and 85 of the *Patent Act*, R.S.C. 1985, c. P-4, as amended, that Apotex Inc. (the "**Respondent**") is selling or has sold the medicine know as Apo-Salvent CFC Free ("**Apo-Salvent**") in a market in Canada at a price that is or was excessive and additional relief;

AND FURTHER TO the Notice of Hearing dated July 8, 2008 providing notice that the Patented Medicine Prices Review Board (the "**Board**") would hold a hearing into the allegations of excessive prices in relation to Apo-Salvent;

AND FURTHER TO the Notice of Motion filed by Board Staff requesting a discontinuance of this proceeding;

AND FURTHER TO the written submissions from counsel for Board Staff and counsel for the Respondents to the hearing panel of the Board seized with this proceeding (the "**Panel**") and submissions made during the Pre-Hearing Conference held on September 13, 2017;

WHEREAS continuing this proceeding would not be in the public interest given that: (i) the proceeding was commenced in 2008 and has been held in abeyance for approximately nine years; (ii) Board Staff submits that given the passage of time since the commencement of this proceeding, Board Staff would face significant evidentiary challenges in continuing with the proceeding; (iii) there is no evidence of any complaints to the Board with respect to the Respondent; (iv) Board Staff submits that the price of Apo-Salvent has decreased in recent years; and (v) Board Staff submits that the decision of the Federal Court of Appeal in *Canada (Attorney General) v. Sandoz Inc.*; *Canada (Attorney General) v. Ratiopharm Inc.* has addressed the jurisdictional issues raised in the Application;

AND WHEREAS the Respondent does not oppose Board Staff's request for a discontinuance of the Application and agrees with Board Staff that it is not in the public interest to continue the Application;

The Panel directs the parties as follows:

1. The Panel hereby orders that this proceeding be discontinued.

Dated at Ottawa, this 21st day of September, 2017.

Original signed by

Signed on behalf of the Panel by
Dr. Mitchell Levine

COUNSEL:

For Board Staff:

David K. Wilson
Calina Ritchie
Isabel Jaen Raasch

For the Respondent:

Katherine Kay
Daniel S. Murdoch