Submission to the Standing Committee on Health
Study on the Patented Medicine Prices Review Board's Final Guidelines

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Introduction

Cystic Fibrosis Canada is pleased to provide this submission to the Standing Committee on Health for the study on the final Patented Medicines Prices Review Board (PMPRB) guidelines. We thank the committee members for this opportunity.

Cystic Fibrosis Canada is a national charitable not-for-profit corporation established in 1960, and is one of the world's top three charitable organizations driven to finding a cure for cystic fibrosis. Cystic Fibrosis Canada is committed to improving the health outcomes and quality of life for people diagnosed with cystic fibrosis in Canada.

Cystic fibrosis is the most common fatal genetic disease affecting Canadian children and young adults. There is no cure. Cystic fibrosis causes various effects on the body, but mainly affects the digestive system and lungs. The degree of cystic fibrosis severity differs from person to person, however, the persistence and ongoing infection in the lungs, with progressive loss of lung function, will eventually lead to death in the majority of people with cystic fibrosis. The COVID-19 pandemic puts people with cystic fibrosis at even greater risk of hospitalizations.

Executive Summary and Recommendations

Cystic Fibrosis Canada supports efforts to lower the costs of prescription drugs for Canadians. We believe that this can and must be done in a way that ensures timely access by Canadians to new medicines, especially precision medicines.

We believe the PMPRB can achieve reasonable pharmaceutical price reductions in ways that result in timely access. For example, it has been estimated that the change in comparator countries from the PMPRB 7 to the proposed PMPRB 11 will lead to price drops in Canada of approximately 20%. However, we are concerned that implementing measures to further reduce prices will only serve to make Canada an outlier with respect to its OECD counterparts, and make our country an unfavourable market for launching medicines, thereby delaying or denying access to needed, new, innovative medicines.

In past submissions to the PMPRB, Cystic Fibrosis Canada asked for measures that could better facilitate a Health Canada application for a game-changing drug (Trikafta) that treats up to 90% of people with cystic fibrosis. Yet, the final guidelines do not go far enough to get this drug and future precision medicines for cystic fibrosis to Canadians who need them. For example, parts of the guidelines create greater uncertainty around how and under which circumstances PMPRB staff and board members may apply pricing tests.

Cystic Fibrosis Canada believes that the category of "Gap Medicines" needs to be clarified in the guidelines, in writing, to provide certainty about its scope and application. If interpreted one way it may be a mechanism that could help facilitate a Health Canada application for Trikafta. Interpreted another way and it does not. This is discussed in greater detail later in this submission.

While Cystic Fibrosis Canada supports pricing controls as a means to improve accessibility, we believe that the pricing pendulum has swung too far, too fast, with insufficient implementation of the feedback received, or insufficient change that reflects the feedback gathered to date on what these changes will mean to patients. These changes have already created a chilling regulatory, review and reimbursement environment, one in which manufacturers are questioning whether or not to launch

their products in Canada.
The concerns that the cystic fibrosis community - including people living with CF, families, clinicians and Cystic Fibrosis Canada - raised in the initial consultation process on the regulatory changes in 2017 and during the guidelines consultations in 2020, have not been fully addressed by the PMPRB nor has the consultation process been inclusive. The information presented during consultations for both the regulations and guidelines was not easy for the average Canadian to understand, and the consultation timelines were too short. Engagement with the PMPRB staff and the Board was minimal and limited to select organizations.

These changes will impact access to medicines not only for Canadians with cystic fibrosis, but for all Canadians who need patented medicines. It is therefore troubling that little to no effort was made to meaningfully engage average Canadians in ways that helped them understand the impact of these changes, so that they too may make evidence-based decisions about how these changes may impact them and their health.

Cystic Fibrosis Canada is also concerned about the timing and scope of these guidelines being adopted during a pandemic, when most Canadians are focused on other issues, and at a time when the courts are weighing in on the legalities and reach of the PMPRB's mandate and methods. Until these cases are settled or all appeals have been exhausted, we will continue to have uncertainty in our drug regulatory and reimbursement environment, which does not bode well for drug launches.

Our detailed brief and recommendations follow.

Background

Over the past three years, the federal government has been driving changes to the Patented Medicine Prices Review Board (PMPRB) to lower drug prices in Canada. While Cystic Fibrosis Canada supports the government's efforts to lower the costs of prescription drugs for Canadians, we believe that this can and must be done in a way that ensures Canadians still have timely access to new innovative medicines, especially precision medicines.

Achieving reasonable pharmaceutical price reductions in ways that result in timely access to new medications is possible. For example, it has been estimated that the PMPRB's change in comparator countries from the PMPRB 7 to the proposed PMPRB 11 will lead to price drops in Canada of approximately 20%. This reduction will achieve important savings while also ensuring new innovations enter the Canadian market.

The PMPRB guidelines, however, have included additional pharmo-economic measures to further reduce prices that will limit access to new innovative medicines. With the addition of these measures, patented drug manufacturers will be required to significantly reduce their prices, requiring price drops of between 45-75%[1]. This will make Canada an outlier among OECD countries, and in a global market, our country will be a much less attractive market in which to launch clinical trials and innovative drugs, including precision medicines that can alter the course of a wide range of devastating diseases such as cystic fibrosis, genetic eye disorders, ALS, neurodegenerative disorders and cancers.

Since the changes to the Patented Medicines Regulations were first proposed in 2017, the patient community has consistently raised concerns that these changes will negatively impact access to new

[1] https://financialpost.com/opinion/price-controls-imposed-by-clueless-politicians-keep-new-life-saving-drugs-out October 31, 2020

medicines and clinical trials for Canadian patients. The PMPRB, and the federal government, have repeatedly assured Canadian patient groups that access to new medicines and clinical trials will not be impacted by the proposed regulatory changes.

Unfortunately, this is not our reality. We are already seeing that new life-changing drugs, such as Trikafta, are not only being delayed but may be denied to Canadians. Manufacturers have pointed to concerns about the regulatory changes Canada is poised to adopt as the reason for delays in new drug launches.

Likewise, manufacturers do not invest in countries where they do not intend to launch new medicines. This means Canadians will have access to fewer clinical trials and patients will have fewer options when older therapies aren't working. In fact, we are already feeling the chilling effect that the proposed regulatory changes have had on access to clinical trials.

For instance, Life Sciences Ontario (LSO) examined concerns about commercialization decisions to understand how they have been made in practice[2]. For this, LSO commissioned IQVIA, a health data and analytics firm, to look at medicine launch trends in Canada and globally over the past 20 years to see if anything has changed in recent years. The results of this study show that:

- Until recent years, Canada was gradually getting faster and more extensive access to new therapies relative to other countries.
- In 2019, the year the drug price controls were adopted, there was a dramatic 40% drop in the number of new globally launched drugs commercialized in Canada – this despite the overall number of global launches rising during the year.
- By mid-2020, Canada benefited from less than half of the new therapies launched globally in 2018 (16 of 37). The majority of the medicines still not commercialized in Canada are for rare diseases and cancer.

Access Environment

With such great uncertainty around the real-world application of the proposed PMPRB reforms, Cystic Fibrosis Canada and other patient groups are concerned. Leading clinicians are too. For instance, cystic fibrosis physicians want to be able to offer the latest treatments to their patients, but their ability to do so has already been limited for the first (Kalydeco) and second-generation (Orkambi and Symdeko) life-changing drugs that treat the basic defect of cystic fibrosis (called "modulators"). In autumn 2020 74 cystic fibrosis clinicians wrote a letter to government asking that government:

- Ensure that the new guidelines for the Patented Medicine Prices Review Board include a pathway for precision medicines like Trikafta.
- Urge the pan-Canadian Pharmaceutical Alliance to negotiate openly and fairly with manufacturers.
- Establish a "fast-track" approval mechanism for orphan medications for rare diseases, specifically for Trikafta.

Cystic fibrosis modulators have been caught in red tape since their approval by Health Canada. As a result, few patients have been able to access these medicines through public or private insurance. As a

[2] https://lifesciencesontario.ca/wp-content/uploads/2020/08/Life-Sciences-Ontario-submission-re-PMPRB-Guidelines-4Aug2020-1.pdf October 31, 2020

case in point: some Canadians with cystic fibrosis have been waiting almost seven years[3] to access Kalydeco through public health plans. The drug has been negotiated by the manufacturer and our public drug programs several times, but none of our public drug programs has the drug listed for all of the mutations indicated by Health Canada.

At least those medicines made it into Canada. Trikafta - the single biggest advancement in treating cystic fibrosis in the history of the disease - may not. This game-changing third generation modulator can treat up to 90% of the population living with this fatal disease and it appears to be halting the progression of the disease in many who take it.

While not a cure, Canadians with cystic fibrosis who are receiving the drug through Health Canada's Special Access Programme have reported fewer exacerbations and hospitalizations, as well as increased lung function and weight. Some have been taken off the lung transplant list as a result of Trikafta. This drug has given people with cystic fibrosis hope for longer, healthier lives, and with good reason.

A recent study funded by Cystic Fibrosis Canada shows the incredible positive impact that Trikafta could have on Canadians living with CF, but only if it becomes available soon. This study examines the potential health outcomes for the Canadian cystic fibrosis (CF) population by the year 2030 and illustrates the impact of the drug by assessing three scenarios: getting access to the drug in 2021, getting access to the drug in 2025 and not getting access at all.

The study shows that early introduction of Trikafta would result in life-changing health improvements by 2030 compared to no drug available, including:

- The estimated median age of survival for a child born with CF would increase by 9.2 years;
- 60% fewer people living with severe lung disease;
- 18% increase in people with mild lung disease;
- 19% fewer hospitalizations or home intravenous courses for chest infections;
- 15% fewer deaths, and;
- A reduction in the number of transplants that are required for severe lung disease.

Despite these tremendous outcomes, the PMPRB changes stand in the way of almost 3,000 Canadians with cystic fibrosis who could benefit from this drug today. The very sickest can sometimes get the drug through the Special Access Programme but people are dying while waiting. Access to the drug has been delayed and it is at risk of not coming to Canada at all. When asked why the drug has not been brought to Canada, the manufacturer, Vertex Pharmaceuticals, has continually raised concerns about the regulatory changes Canada is poised to adopt.

[3] https://www.cysticfibrosis.ca/our-programs/advocacy November 1, 2020

Previous Recommendations

In our July 2020 submission on the revised PMPRB guidelines, Cystic Fibrosis Canada expressed our support for lower drug prices as well as our belief that the changes go too far and will limit access to innovative therapies, and we provided our recommendations for a path forward. These recommendations are to:

- Take a phased approach to implementing the PMPRB regulations by starting with only the changes to the comparator countries. This will bring about an average 20% price reduction on drugs.
- Remove barriers in the PMPRB guidelines by amending the Health Canada approval deadline for "Gap Medicines" to an application deadline of January 1, 2021. This small change could help secure a Health Canada application for Trikafta.
- Appoint an independent third party to evaluate the impact of the revised economic criteria to be used in the PMPRB analysis and ensure that they do not raise unintended barriers to access for Canadians.
- Establish formal mechanisms for engaging patient representatives in PMPRB decision-making and processes to ensure patient voice, choice and representation.

These recommendations are aimed at getting Trikafta into the country now and ensuring Canada has a regulatory environment that helps - not hinders - Canadians' ability to access the innovative medicines they need in the future, two objectives that the final PMPRB guidelines still do not adequately address.

Response to Final Guidelines

In reviewing the final set of guidelines, Cystic Fibrosis Canada found that, while some cosmetic changes were made, little has been done to address the significant access challenges that the PMPRB changes bring. Specifically we are concerned that the guidelines do not:

- **Take a phased approach to implementation.** As a patient community we have long said that the PMPRB is moving too far and too fast. We argue that the PMPRB should start with the implementation of the country comparator changes first before implementing other changes. Besides implementation of the new country comparators, all other changes aimed at further reducing prices should be put on hold until the PMPRB can learn about the impact of implementing phase one and until the impact of the new economic criteria can be thoroughly evaluated by an independent third party.

- **Provide clarity on the Gap Medicines clause.** In our July 2020 submission, Cystic Fibrosis Canada called for amending the Health Canada approval deadline for "Gap Medicines" to an application deadline of January 1, 2021, which could help facilitate a Health Canada submission for Trikafta. Our recommendation is not reflected in the final guidelines. Further examination of the clause reveals multiple possible interpretations. The clause requires clarity.

The final PMPRB guidelines note that "Gap Medicines are medicines ***for which a DIN was assigned on or after August 21, 2019*** and first sold in Canada prior to January 1, 2021"[4].

When it comes to access to Trikafta, written clarification of this clause is key. Under this clause drugs currently provided through the Special Access Programme are considered to have been "sold" in Canada. Trikafta falls into this category, however, it has yet to receive a Drug Identification Number (DIN).

This clause, as written, implies that any drug that receives a DIN on or after August 21, 2019 would be considered a Gap Medicine if it also has a sale prior January 1, 2020. To our knowledge there is no end point to the "on or after" date. As written, drugs that receive a DIN after January 1, 2020 that also have a sale in Canada would be eligible for Gap Medicines status.

- **Remove the almost absolute power that has been granted to PMPRB's board and staff.** The authority given to staff and board members to interpret, implement and enforce these guidelines is sweeping. This is especially concerning given that there are numerous ambiguities in the guidelines that are open to interpretation, such as the Gap medicines clause.

  Further to this, as a result of the June 2020 Federal Court decision the PMPRB will only apply the economic factors to Category 1 drugs if a complaint of excessive pricing is received, at least until appeals from both parties are resolved. In its recent newsletter, the PMPRB states:

  > *Absent a complaint of excessive pricing being filed, the PMPRB will only open an investigation into the price of a Category I medicine where it appears to be non-compliant with its applicable Maximum List Price (MLP) under the Guidelines.*
  >
  > ***This does not preclude PMPRB Staff from considering the MRP in the context of an investigation once commenced, or the Board in an excessive price hearing.*** *The PMPRB may revisit this approach depending on the outcome of the pending appeal.*[5]

  Manufacturers have cited the need for certainty as a requirement to bring new medicines to Canada. Joan McCormick, Principal, Price Regulation Consulting for IQVIA recently outlined industry concerns about the depth and breadth of uncertainty still entrenched in the final guidelines. In addition to also calling for clarification on the Gap Medicines clause, Ms. McCormick[6] noted that the federal court decision appears to have destabilized the modernization process.

[4] https://www.canada.ca/en/patented-medicine-prices-review/services/legislation/about-guidelines/guidelines.html November 1, 2020

[5] https://www.canada.ca/en/patented-medicine-prices-review/services/consultations/draft-guidelines.html November 1, 2020

[6] Implications of the final guidelines. IQVIA. Webinar. October 29, 2020.

Under the final guidelines, manufacturers will be given a compliance report for information purposes. If manufacturers are found to have excessive prices for Category 1 drugs, an investigation would be triggered. However, an investigation can be triggered by complaints as well, and there is little clarity on whether these complaint-based investigations will be limited to Category 1 drugs. Even more troubling is the latitude given to staff to "utilize any of the tests described in the guidelines and modifications of those tests"[7]. This "any test, any time" regulatory approach only creates more uncertainty for manufacturers of innovative medicines, at a time when we need more certainty.

- **Call for an independent third party evaluation of the economic criteria and its impact on access to medicines.** In addition to the need to provide clarity and consistency, there is need for an independent third party to evaluate the impact of the revised economic criteria on the availability of medicines in Canada specifically to inform any decision on whether, when and how to implement the use of the new economic criteria for innovative, precision and other high cost medicines. The HESA study should provide some guidance here.

- **Provide continuous opportunities for meaningful engagement of patient representatives in its drug decision-making processes to ensure that the patient voice is included.** The PMPRB is developing a Guidelines Monitoring and Evaluation Plan (GMEP) to assess the impact of the guidelines and inform any future adjustments required to ensure that they are "working as intended".[8]

  The GMEP will consist of four key areas of focus: price, access, pharmaceutical ecosystem, and PMPRB processes. Each area of focus will be monitored and evaluated by comparing trends prior to and post implementation of the PMPRB's new regulatory framework.

  While we welcome the GMEP, it remains to be seen how meaningfully and continuously patients will be engaged. The GMEP model is meant for broader stakeholder engagement and if not managed effectively, patient voices could be diluted.

Implementation Climate

With the January 1, 2021 implementation date looming, the guidelines still go too far too fast. To further exacerbate the issue, the current implementation climate is fraught with unknowns. We are in the midst of a pandemic that puts patients with respiratory issues at risk and in need of medicines that they may not be able to access because of these changes.

Furthermore, there are legal challenges that are still being considered that may impact the guidelines and their application. The Federal Court decision of July 2020 is being appealed by both the government and by the Plaintiff, Innovative Medicines Canada.

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[7] PMPRB Final Guidelines. Section 95, paragraphs 97 & 98. October, 2020.

[8] *Ibid.*

In an urgent move to stop implementation of the guidelines, 14 health charities and patient groups have come together to protect our access. Together we represent over three million Canadians. While the cystic fibrosis community is the first to feel the sting of these guidelines, the guidelines will affect all Canadians. For more information, please visit protectouraccess.ca

Recommendations

Right now there are thousands of Canadians that are running out of time, and Canadians with cystic fibrosis are among them. On their behalf, we call on the federal government to:

- **Begin with the changes to the comparator countries and use these savings to expedite implementation of a fast and fair process for drugs for rare diseases**. The government has slated implementation of a strategy for high costs medicines for 2022/2023, but Canadians with cystic fibrosis can't wait. They need access to Trikafta now.

- **Clarify the Gap Medicines clause and make it work so Canadians with cystic fibrosis can access Trikafta now.** As written this clause states that any drug that has a sale in Canada before January 1, 2020 and has received a DIN *on or after* August 21, 2019, with no end date, will qualify as a Gap Medicine. If clarification is provided that states otherwise, the Health Canada approval deadline for Gap Medicines should be changed to an application deadline. Under this amendment manufacturers would have until January 1, 2021 to apply for a Drug Identification Number (DIN), rather than secure a DIN by that time.

- **Take a phased approach to implementation and call for an independent third party evaluation of the economic criteria and its impact on access to medicines.** Apart from implementation of the recommendations above, all other changes aimed at further reducing prices should be put on hold until the PMPRB can learn about the impact of implementing phase one and until the impact of the new economic criteria can be thoroughly evaluated by an independent third party. The HESA study should help in this regard.

- **Amend the almost absolute power that has been granted to PMPRB's board and staff.** Manufacturers need certainty in order to bring innovative medicines to Canada. The authority given to PMPRB staff and board members to interpret and implement parts of guidelines as they see fit creates more uncertainty, not less.

- **Provide continuous opportunities for a meaningful engagement of patient representatives in its drug decision-making processes to ensure the patient voice is included.** While we welcome the PMPRB establishing the GMEP, the history of poor patient consultation by the PMPRB concerns us. We need assurances that patients will play a pivotal role in assessing the impact of the guidelines and inform any future adjustments required. Now that the PMPRB will be weighing in on the economic value of patient lives, patients need to be at the table to weigh in on the value of their lives too.

Cystic Fibrosis Canada thanks the members of HESA for initiating this study of the impact of the PMPRB changes. Should you have any questions about this submission, please contact:

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