

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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December 15, 2015

J. Michael Pearson  
Chairman and Chief Executive Officer  
Valeant Pharmaceuticals International, Inc.  
400 Somerset Corporate Blvd.  
Bridgewater, NJ 08807

Dear Mr. Pearson:

Earlier this year, I wrote to you requesting documents about your company's decision to dramatically increase the prices of two heart medications, Isuprel and Nitropress, by 525% and 212%, immediately after acquiring them in February.<sup>1</sup> I also wrote to you last month requesting interviews with several Valeant officials about the decision by your company not to disclose its relationship with a specialty pharmacy known as Philidor.<sup>2</sup>

To date, you have provided none of the requested documents or interviews. Instead, you hired a crisis management firm and retained a law firm in Washington, D.C. that specializes in defending large banks and pharmaceutical companies before Congress.<sup>3</sup>

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<sup>1</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Ranking Member Bernie Sanders, Senate Committee on Health, Education, Labor, and Pensions, Subcommittee on Primary Health and Retirement Security, to J. Michael Pearson, Chief Executive Officer, Valeant Pharmaceuticals International, Inc. (Aug. 14, 2015) (online at <http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2015-08-14.Cummings%20Sanders%20to%20Pearson%20at%20Valeant%20Pharmaceutical%20Re%20Isuprel%20and%20Nitropress.pdf>).

<sup>2</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to J. Michael Pearson, Chief Executive Officer, Valeant Pharmaceuticals International, Inc. (Nov. 16, 2015) (online at <http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2015-11-16.%20EEC%20to%20Valeant%20CEO%20Mr.%20Pearson.pdf>).

<sup>3</sup> *Valeant Hires Attorney, Crisis Management Firm as U.S. Scrutiny Mounts*, Reuters (Dec. 13, 2015) (online at [www.reuters.com/article/us-valeant-hills-probes-idUSKBN0TW0Q420151213#aDkBbHuzLIDbpbDR.97](http://www.reuters.com/article/us-valeant-hills-probes-idUSKBN0TW0Q420151213#aDkBbHuzLIDbpbDR.97)); Covington and Burling LLP,

The Chairman of the Oversight Committee, Rep. Jason Chaffetz, has announced that we will be holding a hearing early next year to examine increasing drug prices. Your refusal to provide any documents or witnesses is obstructing this congressional investigation and preventing a full understanding of your company's suspect actions. Your failure to provide any legitimate justification for this obstruction raises additional, serious concerns about your company's lack of transparency with your own shareholders, with regulating agencies, and with Congress.

In order to prepare for our upcoming hearing, I ask that you provide—by January 8, 2016—all of the documents and interviews requested to date, as well as several additional documents requested below relating to your company's relationship with Philidor. I request that you comply voluntarily with this request so that a subpoena will not be necessary.

### **Ad Hoc Board Committee Investigation of Philidor**

On October 26, 2015, your company announced that it was establishing an ad hoc committee of the Board of Directors to “review allegations related to the company's business relationship with Philidor.”<sup>4</sup> In a press release announcing this review, you stated: “issues have been raised publicly about Philidor's business practices, and it is appropriate that they be fully reviewed.”<sup>5</sup>

Your announcement came amid press reports alleging that Valeant executives helped run some of Philidor's operations, including its billing practices, and that Valeant employees received guidance about how to re-submit rejected insurance claims to obtain higher reimbursement amounts.<sup>6</sup> These same Valeant executives reportedly used fake identities in communications with Philidor employees to hide their connections to Valeant.<sup>7</sup>

A presentation prepared for an October 26, 2015, investor conference call stated that “Philidor operates independently” from Valeant. This claim is highly dubious, however, given Valeant's own admissions that it “has the right to appoint employees to Philidor including a head compliance officer and an in-house lawyer,” has “rights to access Philidor's books, records and

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*Congressional Investigations* (online at [www.cov.com/en/practices/white-collar-and-investigations/congressional-investigations](http://www.cov.com/en/practices/white-collar-and-investigations/congressional-investigations)) (accessed Dec. 15, 2015).

<sup>4</sup> Valeant Pharmaceuticals International, Inc., *Valeant Pharmaceuticals Confirms Appropriateness of Accounting, Appoints Ad Hoc Board Committee to Review Philidor* (Oct. 26, 2015) (online at <http://ir.valeant.com/investor-relations/news-releases/news-release-details/2015/Valeant-Pharmaceuticals-Confirms-Appropriateness-Of-Accounting-Appoints-Ad-Hoc-Board-Committee-To-Review-Philidor/default.aspx>).

<sup>5</sup> *Id.*

<sup>6</sup> *Insight—Valeant Played a Key Role in Building, Operating Philidor Rx*, Reuters (Nov. 12, 2015) (online at [www.reuters.com/article/valeant-pharmacies-officers-idUSL1N13706P20151112#2OpofWLLrDzXxCYZ.97](http://www.reuters.com/article/valeant-pharmacies-officers-idUSL1N13706P20151112#2OpofWLLrDzXxCYZ.97)).

<sup>7</sup> *Valeant and Pharmacy More Intertwined Than Thought*, Wall Street Journal (Oct. 25, 2015) (online at [www.wsj.com/articles/valeants-ties-to-pharmacy-scrutinized-1445817449](http://www.wsj.com/articles/valeants-ties-to-pharmacy-scrutinized-1445817449)).

facilities,” and has a “joint steering committee, composed of members from Valeant and Philidor.”<sup>8</sup>

I request that you provide a copy of the ad hoc committee’s report on Valeant’s relationship with Philidor, as well as all accompanying documents. If the report has not yet been completed, I request a status update on when the report will be finalized, as well as the investigative steps the committee has taken to date, including interviews it has conducted, documents it has reviewed, and any other relevant information or materials it has gathered.

### **Valeant’s Failure to Disclose Relationship with Philidor**

It is a core principle of securities law that public companies have a duty to disclose material information to their shareholders and regulating agencies.<sup>9</sup> For example, Section 302 of the Sarbanes-Oxley Act, which Congress passed in 2002, requires companies to “certify in each annual or quarterly report” filed with the Securities and Exchange Commission (SEC) that “the report does not contain any untrue statement of a material fact or omit to state a material fact.”<sup>10</sup> Similarly, SEC Rule 10b-5 states: “It shall be unlawful ... to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.”<sup>11</sup>

Despite these requirements, Valeant withheld information about its relationship with Philidor from its shareholders and regulating agencies until October 19, 2015. On that date, Valeant held an investor conference call in which it disclosed that Valeant had entered into an option to acquire Philidor in 2014 for \$100 million, after which it began consolidating Philidor’s financials into its own filings.<sup>12</sup> Valeant had previously entered into a services agreement with Philidor to dispense Valeant products in January 2013.<sup>13</sup>

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<sup>8</sup> Valeant Pharmaceuticals International, Inc., *Investor Conference Call Presentation* (Oct. 26, 2015) (online at [http://s1.q4cdn.com/484041954/files/doc\\_presentations/2015/10-26-15-Investor-presentation-Final4.pdf](http://s1.q4cdn.com/484041954/files/doc_presentations/2015/10-26-15-Investor-presentation-Final4.pdf)).

<sup>9</sup> The Supreme Court has defined materiality as the “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.” *Basic v. Levinson*, 485 U.S. 224, 232 (1988) (adopting the standard of materiality set forth in *TSC Industries* for the Section 10(b) and Rule 10b-5 contexts).

<sup>10</sup> 15 U.S.C. § 7241(a)(2).

<sup>11</sup> 17 C.F.R. § 240.10b-5(b) (1951).

<sup>12</sup> Transcript of Valeant Pharmaceuticals International, Inc. *Third Quarter Earnings Call* (Oct. 19, 2015) (online at <http://seekingalpha.com/article/3583366-valeant-pharmaceuticals-vrx-ceo-mike-pearson-on-q3-2015-results-earnings-call-transcript>); Valeant Pharmaceuticals International, Inc., *Investor Conference Call Presentation* (Oct. 26, 2015).

<sup>13</sup> Valeant Pharmaceuticals International, Inc., *Investor Conference Call Presentation* (Oct. 26, 2015).

Your company has given a number of evolving explanations for its failure to disclose this information to your shareholders and the public. During the investor call on October 19, 2015, you explained that you withheld this information because you believed it was a “competitive advantage” that you did not want to disclose to your competitors.<sup>14</sup> A presentation accompanying the investor call also asserted: “We have viewed our relationship with Philidor and our other specialty pharmacies as proprietary and as one of our competitive advantages.”<sup>15</sup>

However, it appears that Valeant’s own actions may have caused the public revelation of its relationship with Philidor. Specifically, on September 4, 2015, Valeant sent a demand letter to a California pharmacy seeking approximately \$70 million in outstanding invoices stemming from a purchase and sale agreement the pharmacy had entered into with a Philidor-related entity known as Isolani, LLC.<sup>16</sup> In response, the pharmacy sued Valeant for declaratory judgment on October 6, 2015.<sup>17</sup>

A week later, Valeant offered another reason for withholding information about its relationship with Philidor during a second investor call on October 26, 2015. A presentation prepared for that call asserted that Valeant did not consider its relationship with Philidor to be “material.” Valeant provided a number of quantitative justifications for this determination, arguing that sales to Philidor were below Valeant’s “10% threshold” for sales revenue and that the purchase of the option to acquire Philidor did not meet its “pre-established internal threshold for specifically disclosing transactions in business combination footnotes.”<sup>18</sup>

However, courts have held that “materiality ... cannot be reduced to a bright-line rule,” and they have “consistently rejected a formulaic approach to assessing the materiality of an alleged misrepresentation.”<sup>19</sup> It is difficult to believe that a reasonable investor would not consider the facts outlined above “material.”

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<sup>14</sup> Transcript of Valeant Pharmaceuticals International, Inc. *Third Quarter Earnings Call* (Oct. 19, 2015).

<sup>15</sup> Valeant Pharmaceuticals International, Inc., *Q3 2015 Financial Results Presentation* (Oct. 19, 2015) (online at [http://s1.q4cdn.com/484041954/files/doc\\_presentations/2015/q3/Q3-2015-Earnings-Deck-10-19-2015-Final2.pdf](http://s1.q4cdn.com/484041954/files/doc_presentations/2015/q3/Q3-2015-Earnings-Deck-10-19-2015-Final2.pdf)).

<sup>16</sup> Letter from Robert Chai-Onn, Executive Vice President, Chief Legal Officer and General Counsel, Valeant Pharmaceuticals North America LLC, to Russell Reitz, Manager, California Pharmacy Operations, R&O Pharmacy LLC (Sept. 4, 2015) (online at <http://sirfonline.wpengine.netdna-cdn.com/files/2015/10/1-1-Exhibit-A.pdf>); Declaration of Gary Jay Kaufman, Exhibit A (Sept. 8, 2015), *Isolani, LLC v. R&O Pharmacy, LLC*, Super. Ct. Cal. (No. BC593861).

<sup>17</sup> Complaint for Declaratory Judgment (Oct. 6, 2015), *R&O Pharmacy, LLC v. Valeant Pharmaceuticals North America*, C.D.Cal. (No. 2:15-cv-07846).

<sup>18</sup> Valeant Pharmaceuticals International, Inc., *Investor Conference Call Presentation* (Oct. 26, 2015).

<sup>19</sup> *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 30 (2011); *Landmen Partners, Inc. v. The Blackstone Group, L.P.*, 634 F.3d, 706, 717 (2d Cir. 2011) (citing *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 161-162 (2d Cir. 2000)).



### **Additional Requests for Documents and Information**

In addition to the documents and interviews requested previously, I ask that you provide the following documents by January 8, 2016:

- (1) the ad hoc committee's report on Valeant's relationship with Philidor and all accompanying documents;
- (2) the services agreement entered into between Valeant and Philidor in 2013;
- (3) Valeant's structured option agreement to acquire Philidor in 2014, the amounts paid to date by Valeant, any outstanding payments due, and the identity of the person or entity that accepted payment or payments on behalf of Philidor;
- (4) all exclusivity, sales, or other agreements entered into between Valeant and Philidor from January 2013 to October 30, 2015;
- (5) documents, including internal and external communications, prior to October 19, 2015, memorializing Valeant's decision to omit information about Philidor in its filings with the SEC, including documents relating to whether such information had been determined to be material for reporting purposes;
- (6) documents, including internal and external communications, concerning Valeant's decision to finally disclose its relationship with Philidor to shareholders on October 19, 2015;
- (7) documents, including internal and external communications, concerning Valeant employees' involvement in Philidor's business operations, including billing and reimbursement practices; and
- (8) the identities of any employees shared between Valeant and Philidor and any alternate identities or e-mail addresses used by Valeant employees in communications with Philidor employees.

Finally, I understand that the majority of Valeant's Board of Directors had direct knowledge of the Philidor relationship before it was disclosed to shareholders—including personally touring Philidor's facilities. For this reason, I am providing a courtesy copy of this letter to each Board member. If you have any questions about this request, please contact my staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings  
Ranking Member

cc: The Honorable Jason Chaffetz, Chairman  
Committee on Oversight and Government Reform

Kate Stevenson, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Norma A. Provencio, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Robert N. Power, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Ronald H. Farmer, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

D. Robert Hale, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Colleen Goggins, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Anders Lonner, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Robert A. Ingram, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Theo Melas-Kyriazi, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

Howard B. Schiller, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.

G. Mason Morfit, Member, Board of Directors  
Valeant Pharmaceuticals International, Inc.