

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO. 1203

THIS DOCUMENT RELATES TO:

SHSILA BROWN, et al.

v.

CIVIL ACTION NO. 99-20593

AMERICAN HOME PRODUCTS
CORPORATION

COURT-APPROVED PROCEDURE NO. 14
(Procedure for the Audit of Category Two Claims with Conflicting Diagnoses)

AND NOW, in accordance with the Nationwide Class Action Settlement Agreement ("Settlement Agreement") and the agreement of Class Counsel and Wyeth, it is hereby ORDERED as follows:

1. *Incorporation of Settlement Agreement Definitions.* The capitalized terms used in this Procedure shall have the same meaning as those terms have in the Settlement Agreement, as amended. Additional capitalized terms defined in this Procedure shall have the meanings given to them in this Procedure.

2. *Applicability.* This Procedure applies to the potential claim for the Category Two Payment and the Additional Medical Services or Cash Benefit ("Cash/Med Benefit") of every Category Two Class Member who has on file with the Trust more than one Gray or Green Form Part II based on the same echocardiogram (the "Relevant Echocardiogram") in which the Gray and/or Green Forms contain conflicting assertions as to whether the Class Member has FDA Positive or Mild Mitral regurgitation ("Conflicting Diagnosis Claims").

3. *Category Two Audits.* Wyeth may designate Conflicting Diagnosis Claims for Category Two Audit under this Procedure. The Auditing Cardiologists who conduct Fund A Audits pursuant to Court-Approved Procedure No. 9 ("Auditing Cardiologist") shall conduct the Category Two Audits of Conflicting Diagnosis Claims.

4. *Echocardiogram Review.* On each claim designated for Category Two Audit, an Auditing Cardiologist shall review the Relevant Echocardiogram, complete a report ("Category

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Two Audit Report") indicating the level of regurgitation, if any, found by the Auditing Cardiologist on the Relevant Echocardiogram, and return such report to the Trust. The Trust shall transmit a copy of the Category Two Audit Report to the affected Class Member, Class Counsel, and (in electronic and hard copy form) to Wyeth.

5. **Determination of Benefits.** No later than 30 days after receipt of the Category Two Audit Report on a Class Member's Relevant Echocardiogram, the Trust shall determine the Class Member's medical eligibility for the Category Two Payment and the Cash/Med Benefit on the basis of the Category Two Audit Report and shall pay the Class Member, if otherwise eligible and not previously paid, such benefits, within 45 days after making such determination.

6. **Request for Review.** A Class Member may dispute a finding of less than FDA Positive or Mild Mitral Regurgitation on the Category Two Audit Report by submitting to the Trust a Request for Review ("Request for Review") no later than 30 days after the date of the Trust's transmittal of a copy of the Category Two Audit Report to the Class Member.

7. **Fund A Audit Special Master Review and Report.** No later than 14 days after receipt of a Request for Review (and the Review Costs under Paragraph 8 of this Procedure), the Trust shall submit to the Fund A Audit Special Master the best available copy of the Relevant Echocardiogram. The Fund A Audit Special Master shall review the Relevant Echocardiogram and prepare a report ("Special Master Report") indicating the level of regurgitation, if any, found by the Fund A Audit Special Master on the Relevant Echocardiogram. The findings in the Special Master Report shall be final pursuant to Fed. R. Civ. P. 53(g)(3)(B) without the need for further orders of the Court, and shall determine the Class Member's regurgitation levels for the purposes of determining the Class Member's medical eligibility for the Category Two Payment and/or the Cash/Med Benefit.


8. **Review Costs.** The Trust shall be responsible for remitting to the Fund A Audit Special Master payment for the fees and expenses of the Fund A Audit Special Master in connection with this Procedure. The Class Member shall pay to the Trust \$250 for the cost of the Fund A Audit Special Master to determine a Request for Review submitted by the Class Member ("Review Costs"). The Trust shall pay any actual fees and expenses of the Fund A Special Master in excess of that amount on a particular claim. A Class Member submitting a Request for Review shall send to the Trust along with the Class Member's Request for Review a certified or cashier's check in the amount of \$250 for the Review Costs. If a Class Member fails to remit such Review Costs to the Trust within 30 days after the date of the Trust's transmittal of a copy of the Category Two Audit Report to the Class Member, the Fund A Auditing Cardiologist's findings shall determine the level of regurgitation, if any, present on the Relevant Echocardiogram and there shall be no review by the Fund A Special Master. If the Fund A Audit Special Master determines that Relevant Echocardiogram demonstrates Mild Mitral or FDA Positive Regurgitation, the Trust shall refund the \$250 to the Class Member, without interest.

9. **No Effect on Other Benefit Claims.** The outcome of the Audit of a Conflicting Diagnosis Claim shall apply only to the Class Member's claim for the Category Two Payment

and the Cash/Med Benefit and shall not be preclusive as to any issue presented by claims by the Class Member for other benefits under the Settlement Agreement.

10. *Effective Date and Duration of this Procedure.* This Procedure shall become effective on the date of entry by the Court and shall remain in effect until further order of the Court.

BY THE COURT:


HARVEY A. BARTLE, III, C.J.
February 26, 2007