UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| JACOB GUNVALSON, CHERI and JOHN GUNVALSON as Guardians for Jacob Gunvalson, and CHERI and JOHN GUNVALSON, Individually, | : | |
| Plaintiffs, | : | District of New Jersey<br>Index No. 08-cv-3559 |
| - against - | : | |
| PTC THERAPEUTICS, INC., | : | |
| Defendants. | : | |

**AFFIDAVIT OF STUART W. PELTZ, Ph.D.**

STATE OF NEW JERSEY )
) ss.:
COUNTY OF MIDDLESEX )

STUART W. PELTZ, Ph.D., being duly sworn, deposes and says:

1. I am a co-founder of defendant PTC Therapeutics ("PTC"), a member of the PTC's board of directors, and have served as President and/or Chief Executive Officer of PTC since the company's inception in 1998. I submit this affidavit on behalf of PTC in opposition to the motion of plaintiffs John Gunvalson and Cheri Gunvalson, in their capacity as guardians for Jacob Gunvalson, and Jacob Gunvalson, John Gunvalson and Cheri Gunvalson, individually, for a preliminary injunction forcing PTC to give Jacob Gunvalson access to PTC124 either (i) pursuant to a "protocol exception" permitting him to participate in an ongoing clinical trial for

which he is ineligible; or (ii) for use in a proposed "single patient study" by his pediatrician, Dr. John Parkin.

2. I make this affidavit on the basis of my own personal knowledge.

3. At this juncture, I believe it would be inappropriate and irresponsible for PTC to make PTC124 available to Jacob Gunvalson or any other person with Duchenne muscular dystrophy ("DMD") or Becker muscular dystrophy ("BMD") outside the approved protocols for the current Phase 2a extension study and Phase 2b clinical trials for the drug. The only clinical trials for PTC124 as a DMD/BMD treatment that have been completed to date were short-term trials involving the administration of PTC124 to DMD patients for a period of just 28 days. BMD patients were ineligible for this study. As a result, there is currently no safety data available to justify administering PTC124 to DMD/BMD patients over significantly longer periods of time, apart from in the carefully-monitored setting of our current clinical trials.

4. I understand that the Gunvalsons are seeking individual access to PTC124 based on their belief that it will slow the progression of Jacob's DMD or BMD and have a meaningful impact on his quality of life. However, at this point, we simply do not know that this is true, and while the drug is unapproved and undergoing required placebo controlled trials, we are ethically required to presume that it is not. To date, there have been no clinical trials for PTC that assess whether the drug actually provides a clinical benefit (*i.e.,* an alleviation of symptoms, slowing of disease progression, etc.) to certain DMD/BMD patients. To the contrary, the only completed trials for the drug thus far involved subjects with DMD only, and were designed to measure the secondary endpoint of muscle dystrophin expression. While the results from those trials were encouraging and improved dystrophin expression was observed in trial participants, we do not know at this time whether improved dystrophin expression will translate into concrete benefits

for DMD/BMD patients. While PTC is hopeful that the Gunvalsons' pronouncements about PTC's ability to improve the quality of the lives of DMD patients who have DMD or BMD due to a nonsense mutation will ultimately prove correct, there is no direct evidence to support such statements at this time.

5. It would be a mistake to interpret PTC's recently-announced deal with Genzyme Corporation ("Genzyme") pursuant to which Genzyme will commercialize PTC124 in countries other than the United States and Canada as evidence of clinical benefit. Under the deal, Genzyme has agreed to make an upfront payment to PTC of $100 million, which money will be used to fund the remainder of clinical testing and trials for PTC124 that are necessary to secure approval for the drug. However, apart from this upfront payment, Genzyme's obligations to make payments to PTC are wholly contingent on PTC being able to achieve certain milestones and successfully bring PTC124 to market. If PTC cannot achieve these milestones or PTC124 does not receive FDA approval, PTC will not receive any additional money from Genzyme. Thus, the Genzyme deal is structured to take into account the reality that PTC124 may very well ultimately fail, like the majority of other experimental drugs in this stage of trials.

**The Gunvalsons' Lawsuit May Impact our Communication Style**

6. In 2008 PTC received an Art of Industry Partnership Award from the Genetic Alliance, honoring it for its close work with advocacy groups and patient families. I am very concerned about the impact that this lawsuit may have on our ability to maintain the open and honest communication style that helped to earn us this award. If statements made by our employees can be misinterpreted, mischaracterized, or simply made up, to form the basis for lawsuits like this one, it would be inadvisable for us to continue to have such extensive interactions with patient families and the larger DMD/BMD community in the future. If similar

lawsuits follow this one, as I think will happen if the Gunvalsons obtain the extraordinary relief they are seeking, then we will have no alternative but to drastically curtail our interaction with the DMD/BMD community.

**PTC124 Research Is Funded By Grants That Were Independently Obtained by PTC**

7. Although the entire DMD/BMD community appreciates the efforts and involvement of advocacy groups and families, including the Gunvalsons, the idea that those efforts or Mrs. Gunvalson's relationships with Congressmen or women should entitle Jacob to preferential treatment over others who have not participated in prior or ongoing trials is a proposition PTC strongly and resoundingly rejects. When, and if, sufficient and positive safety data for PTC124 is obtained, and we put into place some type of access program, that program will be designed to provide the drug to many DMD/BMD patients who were ineligible for, or did not participate in, our earlier trials, some of whom are in more advanced stages of the disease than Jacob Gunvalson. Any such program will not be limited to one patient seeking preferential treatment.

8. The Gunvalsons are claiming that PTC124 research benefited from a $15.4 million dollar grant from the National Institutes of Health ("NIH") that Mrs. Gunvalson helped to secure. This is untrue in a number of respects. First, that grant was given to the University of Pennsylvania as part of a collaborative effort between PTC and Parent Project Muscular Dystrophy ("PPMD") known as Project Catalyst. Second, none of the proceeds that PTC will receive from that grant will be used to fund PTC124 research.

9. In 2003, after PTC had begun developing PTC124, I was approached by Pat Furlong, the founder and President of PPMD, a large organization that supports medical research for muscular dystrophy treatments, with a proposal to collaborate with PPMD to screen

additional targets with the potential for treating forms of DMD/BMD that are not caused by a nonsense mutation, and therefore not intended to be treated by PTC124. Approximately 85% of the individuals who have DMD/BMD do not have a nonsense mutation and, because PTC124 is specifically designed to address nonsense mutations, PPMD wanted to gauge PTC's interest in finding other treatments that might help all patients with DMD or BMD. I enthusiastically agreed to Ms. Furlong's proposal and Project Catalyst was created.

10. In 2007, after a formal proposal was made to the NIH for a university grant to fund Project Catalyst's work (in which Mrs. Gunvalson had no involvement), the NIH awarded a $15.4 million grant to the University of Pennsylvania, where five DMD/BMD targets are currently under investigation. At present, the work of Project Catalyst is in its nascent stages and none of the targets Project Catalyst is investigating is remotely close to the state of development of PTC124. It could be years before any of these treatments is researched in a clinical trial.

11. The only NIH grant that was used in any way to fund the development for PTC124 was a grant awarded in 2004, the majority of which went to the University of Massachusetts to conduct *in vitro* studies of PTC124. None of the Gunvalsons had any involvement in the process of obtaining NIH funding for these non-clinical studies.

12. To date, PTC124 clinical research has been funded from a variety of sources – far most significantly from investment capital contributed by PTC's equity investors, and to a much lesser degree, from direct grants from the Muscular Dystrophy Association, Cystic Fibrosis Foundation Therapeutics, Inc., the FDA's Office of Orphan Products Development, and an indirect grant from the National Center for Research Resources. To my knowledge, Mrs. Gunvalson was not involved in obtaining any of this funding on PTC's behalf.

**Other Experimental DMD Treatments Are Currently Available**

13. The Gunvalsons have suggested that PTC124 is the only drug that targets DMD/BMD caused by a nonsense mutation currently under clinical investigation. This is incorrect. As a matter of fact, enrollment for a six-month randomized clinical trial of gentamicin in DMD patients with stop codon mutations (*i.e.*, DMD patients with nonsense mutations) is currently ongoing. Attached hereto as Exhibit A is a description of this trial posted on www.clinicaltrials.gov.

**No Promises of Pre-Approval Access to PTC124 Were Made**

14. Mrs. Gunvalson is also claiming that I told her at a dinner on September 28, 2006 that Jacob would get access to PTC124. This is untrue. To the best of my recollection, that dinner took place following a meeting of PPMD, and I recall that the dinner table conversation was centered on Project Catalyst's activities. As I have explained above, Project Catalyst has no relationship to the development of PTC124. I do not recall discussing PTC124 or the Gunvalson's desire to have access to PTC124 at all with Mrs. Gunvalson at the dinner on September 28, 2006.

15. I understand that Mrs. Gunvalson also has alleged that I told Mrs. Gunvalson on July 14, 2007, in response to a question as to whether Jacob could get PTC124, that Jacob would get access to PTC124. I never made such a statement to Mrs. Gunvalson and never would make such a statement to any parent whose child had DMD/BMD. Neither I, nor anyone else at PTC, controls enrollment in any clinical trial for PTC124, and the only way for anyone to "get access" to PTC124 now or at any time in the past was to participate in a clinical trial for the drug.

16. I do recall that, during this timeframe, Mrs. Gunvalson and her husband approached me, and Mrs. Gunvalson asked me why Jacob had not yet been enrolled in a clinical

trial for PTC124. In response, I told Mrs. Gunvalson that no one at PTC controlled trial enrollment, and that I understood that she had chosen not to pursue enrolling Jacob in Phase 2a clinical trials for PTC124 that had taken place earlier that year. At no point during that conversation did Mrs. Gunvalson dispute that it was her choice not to have Jacob fulfill the necessary eligibility requirements for participation in Phase 2a trials, nor did she ever say that Cláudia Hirawat, or anyone else from PTC, influenced that choice.

**PTC's Development of a Pre-Approval Access Program**

17. PTC has done extensive research on other pharmaceutical companies' approaches to pre-approval access programs. Based on this research, the company is considering a proposal for a plan to provide access to PTC124. Under this plan, the earliest PTC124 would be made available outside the clinical trial setting is sometime in the third quarter of 2009. At that time, we anticipate that safety data from approximately 90 patients in our Phase 2b trials who have taken PTC124 for a period of 24 weeks will be accrued and analyzed. Provided that safety data yields positive results, I am of the personal opinion that some type of access to PTC124 for DMD/BMD patients who were excluded from clinical trials might be appropriate at that time, subject to a formal program developed by PTC consistent with FDA guidelines.

18. However, at this juncture, my view is that any access to PTC124 must be in a closely-monitored setting in connection with an ongoing clinical trial administered by experienced investigators. We simply do not have sufficient data at this point to support the

conclusion that PTC124 is a safe long-term DMD/BMD treatment or that it will afford DMD/BMD patients a clinical benefit.

Stuart W. Peltz, Ph.D.

Sworn to before me this
11 day of August, 2008

Brian P. Sharkey
~~Notary Public~~ Attorney-At-Law

# Exhibit A

# Six Month Study of Gentamicin in Duchenne Muscular Dystrophy With Stop Codons

**This study is currently recruiting participants.**
Verified by Nationwide Children's Hospital, July 2008

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|---|---|
| **Sponsors and Collaborators:** | **Nationwide Children's Hospital**<br>National Institutes of Health (NIH) |
| **Information provided by:** | Nationwide Children's Hospital |
| **ClinicalTrials.gov Identifier:** | NCT00451074 |

## Purpose

The purpose of this study is to determine the safety of giving intravenous (IV) **gentamicin** to boys with **Duchenne muscular dystrophy** who have stop codon mutations.

| Condition | Intervention | Phase |
|---|---|---|
| **Duchenne Muscular Dystrophy** | Drug: **Gentamicin** infusions twice a week for six months | Phase I |

Genetics Home Reference related topics: Duchenne and Becker muscular dystrophy
L1 syndrome

MedlinePlus related topics: Muscular Dystrophy

ChemIDplus related topics: Gentamicins

U.S. FDA Resources

Study Type: Interventional
Study Design: Treatment, Open Label, Dose Comparison, Single Group Assignment, Safety Study

Official Title: A Six Month Randomized, Clinical Trial of **Gentamicin** in **Duchenne Muscular Dystrophy** Subjects With Stop Codon Mutations

**Further study details as provided by Nationwide Children's Hospital:**

Primary Outcome Measures:

- Safety [ Time Frame: 6 months ] [ Designated as safety issue: Yes ]

Secondary Outcome Measures:

- Determine if **gentamicin** given over six months improves muscle strength. [ Time Frame: 6 months ] [ Designated as safety issue: No ]
- Determine if **gentamicin** given over six months increases **dystrophin** binding at the muscle membrane. [ Time Frame: 6 months ] [ Designated as safety issue: No ]

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| Estimated Enrollment: | 12 |
| Study Start Date: | March 2007 |
| Estimated Study Completion Date: | June 2009 |
| Estimated Primary Completion Date: | June 2009 (Final data collection date for primary outcome measure) |

Intervention Details:

Drug: **Gentamicin** infusions twice a week for six months
**Gentamicin** infusions twice a week

**Detailed Description:**

The primary purpose of this second cohort is to see if the IV Medication, gentamicin, is safe to give twice a week for six months to boys with Duchenne muscular dystrophy (DMD). Secondarily, we want to know if gentamicin can help strengthen the muscles of boys with DMD who have a particular type of genetic mutation known as a stop codon. The gentamicin is thought to allow for "read-through" of this type of mutation which would allow for the production of dystrophin, a protein which is lacking in boys with DMD.

## Eligibility

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|---|---|
| Ages Eligible for Study: | 5 Years to 20 Years |
| Genders Eligible for Study: | Male |
| Accepts Healthy Volunteers: | No |

**Criteria**

Inclusion Criteria:

- Age 5-20 years
- Duchenne muscular dystrophy documented by written report of stop codon mutation analysis of the dystrophin gene.
- Subject is capable of cooperating for efficacy and safety testing
- Absent dystrophin on muscle biopsy
- Subjects may be untreated, taking prednisone or comparable corticosteroids
- Subjects taking corticosteroids must be on the same dose for at least 3 months (90 days) prior to the start of the study.

Exclusion Criteria:

- Known allergy to any aminoglycoside or sulfate compounds

- Current use of potential nephrotoxic or ototoxic drug
- Current use of corticosteroids has not been stable for 3 months (90) days
- Known mutation at nucleotide 1555 in 12S rRNA gene of mitochondrial DNA (predisposes to aminoglycoside hearing loss and commercially available via Athena Diagnostics Lab). This DNA testing (Hearing susceptibility test) will be made available through funding from this grant.
- Inability to hear within the range of 0 to 25 dB in any hearing frequency by pure tone audiometry
- Cystatin C equal to or > 1.4mg/L
- Other medical condition that would impede the conduct of study (e.g., congestive heart failure)

## Contacts and Locations

Please refer to this study by its ClinicalTrials.gov identifier: NCT00451074

**Contacts**

Contact: Cheryl A. Wall, RN, MS (614) 722-2238 Cheryl.Wall@nationwidechildrens.org

Contact: Christopher J. Shilling, MS (614) 722-6960 Chris.Shilling@nationwidechildrens.org

**Locations**

**United States, Arizona**

Neuromuscular Research Institute - Scottsdale Healthcare Hopsital at Shea **Recruiting**

Scottsdale, Arizona, United States, 85258

Contact: Richardo D Bien-Willner, BS 480-314-1007 ext 1026 rwillner@azneuromuscular.or

Principal Investigator: Kumaraswamy Sivakumar, MD, MRCP

**United States, Kansas**

University of Kansas **Recruiting**

Kansas City, Kansas, United States, 66160-0001

Contact: Victoria Watts, BSN, RN 913-588-5479 vwatts@kumc.edu

Principal Investigator: Richard J Barohn, MD, FAAN

**United States, Ohio**

The Research Institute at Nationwide Children's Hospital/ Nationwide Children's **Recruiting**

Columbus, Ohio, United States, 43205

Contact: Cheryl A. Wall, RN, MS 614-722-2238 Cheryl.Wall@nationwidechildrens.org

Contact: Susan A. Gailey, BA 614-355-2897 Susan.Gailey@nationwidechildrens.org

**Sponsors and Collaborators**

**Nationwide Children's Hospital**

National Institutes of Health (NIH)

**Investigators**

Principal Investigator: Jerry R. Mendell, M.D. The Research Institute at Nationwide Children's Hos

## More Information

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|---|---|
| Responsible Party: | Nationwide Children's Hospital ( Jerry R. Mendell, MD ) |
| Study ID Numbers: | NS043186, NS043186 |
| First Received: | March 21, 2007 |
| Last Updated: | July 16, 2008 |
| ClinicalTrials.gov Identifier: | NCT00451074 |
| Health Authority: | United States: Food and Drug Administration |

Keywords provided by Nationwide Children's Hospital:
Stop codon mutations

Study placed in the following topic categories:

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|---|---|
| Muscular dystrophy, Duchenne and Becker type | Genetic Diseases, Inborn |
| Muscular Dystrophies | Muscular Dystrophy, Duchenne |
| Muscular Diseases | Gentamicins |
| Becker's muscular dystrophy | Genetic Diseases, X-Linked |
| Muscular Disorders, Atrophic | Duchenne muscular dystrophy |
| Musculoskeletal Diseases | Atrophy |
| Neuromuscular Diseases | Muscular dystrophy |

Additional relevant MeSH terms:

| | |
|---|---|
| Protein Synthesis Inhibitors | Nervous System Diseases |
| Anti-Infective Agents | **Gentamicins** |
| Anti-Bacterial Agents | Enzyme Inhibitors |
| Molecular Mechanisms of Pharmacological Action | Pharmacologic Actions |
| Therapeutic Uses | |

ClinicalTrials.gov processed this record on August 05, 2008




Links to all studies - primarily for crawlers