UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	07 CR 10099 RGS CRIMINAL NO.
v.	VIOLATION:
PHARMACIA & UPJOHN COMPANY, INC.,	42 U.S.C. §1320a-7b(b)(2)(B)
Defendant.	

INFORMATION

The United States Attorney charges that:

COUNT ONE: 42 U.S.C. §1320a-7b(b)(2)(B)
(Offer of Payment of Kickbacks)

At all times material hereto, unless otherwise alleged:

The Defendant

1. **PHARMACIA & UPJOHN COMPANY, INC. ("PHARMACIA")** was a Delaware corporation, with a principal place of business in Kalamazoo, Michigan. **PHARMACIA** was a subsidiary of Pharmacia & Upjohn Company LLC, which was the successor to Pharmacia & Upjohn Company, a former subsidiary of Pharmacia Corporation, which during the relevant period of time (the year 2000) was a publicly traded company on the New York Stock Exchange. **PHARMACIA** and its corporate affiliates will be referred to in this Information as "**PHARMACIA**."

2. **PHARMACIA** was engaged in, among other things, the development, manufacture, promotion, sale and interstate distribution of prescription drugs intended for human use in the United States. **PHARMACIA** distributed or directed the distribution of pharmaceutical drugs to

all fifty states and the District of Columbia.

3. One of the pharmaceutical drugs promoted, sold and distributed interstate by **PHARMACIA** was a human growth hormone product called Genotropin.

4. The business unit within **PHARMACIA** that was responsible for the promotion, sale and distribution of Genotropin was the Endocrine Care Business Unit.

The Bridge Program and the Selection of Company P

5. For the drug Genotropin, **PHARMACIA** used outside vendors for distribution, patient assistance and insurance reimbursement. **PHARMACIA** called this outsourced program the Bridge Program. Proper administration of the Bridge Program was critical to the success of Genotropin.

6. In early 2000, **PHARMACIA** determined that it was dissatisfied with its then current vendor on the Bridge Program and announced that it was putting the contract for the administration of its Bridge Program out to bid. In early to mid-2000, **PHARMACIA** met with certain potentially interested bidders and provided a Request for Proposal to these entities for a three year contract.

7. In June of 2000, **PHARMACIA** received bids from three entities; Company P, a subsidiary of Company Q, and Company R.

8. After receiving those bids, in or about early July 2000, **PHARMACIA** rated the bids using over a dozen criteria, including understanding the Bridge Program and its needs, ability to deliver Bridge Program needs, cost competitiveness, quality systems, products and services, and responsiveness. **PHARMACIA's** evaluation based on those criteria yielded a selection of

Company P. **PHARMACIA** evaluated Company P's bid as $12 million less expensive, over a three year period, than the nearest competitor's bid.

9. In mid-July 2000, the Endocrine Care team of **PHARMACIA** recommended to **PHARMACIA's** senior management that Company P be selected to manage the Bridge Program. That recommendation included the following statements:

> A team of representatives from Pharmacia's Procurement, Auditing Services, Accounting, Distribution, Legal, Sales, Accounting and Marketing functions was composed to perform site visits and review RFP responses and presentations. Based on input from Marketing, Accounting, Distribution, Auditing Services and Procurement through their individual completion of the RFP evaluation form, and internal financial analysis of proposed program costs, collectively the team recommends [Company P] as Pharmacia's new Genotropin Bridge Program outsourcing partner.

Shortly thereafter, by telephone, **PHARMACIA** notified Company P that it had been awarded the Bridge Program.

<u>Formulary Opportunities at Company Q</u>

10. However, at or about the same time, **PHARMACIA** learned from Company Q of an opportunity to improve the formulary positioning and/or formulary ancillary relationships of **PHARMACIA** drug products at Company Q, one of the country's largest and most influential pharmacy benefit managers. Thereafter, **PHARMACIA** believed that Company Q was willing to recommend the purchasing or ordering of **PHARMACIA's** drug products, some or all of which were drug products that were eligible for payment in whole or in part under a Federal health care program, in return for **PHARMACIA** awarding the Bridge Program contract to the subsidiary of Company Q which had previously submitted a bid rejected by **PHARMACIA**.

11. The basis for **PHARMACIA's** belief, referred to above, included a July 13, 2000

conference call, initiated by Company Q, between employees of **PHARMACIA** and Company Q, during which employees of Company Q emphasized the interest of the subsidiary of Company Q in obtaining the Bridge Program contract and also described assistance that Company Q could provide with generating sales of **PHARMACIA's** drug products.

12. A further basis for **PHARMACIA's** belief, referred to above, included a meeting at **PHARMACIA's** Skokie, Illinois offices on July 20, 2000, between employees of **PHARMACIA** and employees of Company Q. At this meeting, the participants discussed Company Q's bid for the Bridge Program, and the fact that **PHARMACIA** viewed the bid as substantially more expensive than the bid from Company P. The participants also discussed the assistance that Company Q could provide with generating sales of **PHARMACIA's** drug products. A high level employee of Company Q also provided **PHARMACIA** with a private tutorial on Company Q's formulary bidding process.

13. Shortly thereafter, including on or about July 28, 2000 and July 31, 2000, **PHARMACIA** prepared financial analyses that showed that the anticipated financial benefits to **PHARMACIA** resulting from improved formulary positioning and formulary ancillary benefits from Company Q were worth millions of dollars in increased drug sales to **PHARMACIA**. One of these analyses noted that if the bids from Company P and the subsidiary of Company Q were analyzed on a stand alone basis, the choice would be Company P. However, this analysis noted that when factoring in the formulary positioning and formulary ancillary benefits that **PHARMACIA** expected it would obtain from Company Q if it awarded the Bridge Program to the subsidiary of Company Q, an award to the subsidiary of Company Q maximized the total

corporate value to **PHARMACIA**.

14. To assuage the Endocrine Care Business Unit that expected to incur more than $12 million in excess costs over 3 years if the subsidiary of Company Q were awarded the Bridge Program, **PHARMACIA** promised the Endocrine Care Business Unit that another business unit within **PHARMACIA** that expected to benefit from the improved formulary positioning and formulary ancillary benefits would reimburse the Endocrine Care Business Unit for the excess costs associated with selecting the subsidiary of Company Q as opposed to Company P.

<u>The Offer of the Bridge Program to the Subsidiary of Company Q</u>

15. On or about August 1, 2000, **PHARMACIA** retracted the award of the Bridge Program contract to Company P, despite believing that Company P's bid price for the contract was millions of dollars lower, and the quality of services higher, than the bid presented by the subsidiary of Company Q.

16. **PHARMACIA** instead offered the Bridge Program contract to the subsidiary of Company Q to induce Company Q to provide improved formulary positioning and/or formulary ancillary benefits that **PHARMACIA** expected would increase its drug sales by millions of dollars.

17. On or about August 1, 2000, in the District of Massachusetts and elsewhere,

PHARMACIA & UPJOHN COMPANY, INC.

knowingly and willfully offered remuneration in the form of excess payments on a contract to administer the Bridge Program to a subsidiary of Company Q to induce Company Q to recommend purchasing or ordering **PHARMACIA's** pharmaceutical products, which were eligible for payment in whole or in part under a Federal health care program.

All in violation of 42 U.S.C. §1320a-7b(b)(2)(B).

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By: ______________________
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