

## Questcor in Cover-Up Mode: Deleting Evidence from its Website ... BUT Citron Finds the Smoking Gun and Presents it Here for the Federal Trade Commission

**Investors please don't read further -- you might find something you don't like.**

Over the coming months, Citron Research will release a series of articles on Questcor (NASDAQ:QCOR) intended to shed light on probable issues of interest to the multi-pronged investigation underway by multiple regulatory agencies into numerous aspects of Questcor's business strategy that political correct-speak would deem "legally challenged". These articles will dig deeper into topics such as:

- The Chronic Disease Fund, and the role it plays in contributing to Questcor's revenues
- Medicare billing (it is very dangerous to participate in a scheme to defraud the Federal Government)
- Insurance reimbursement coding for Acthar

Meanwhile, today's question is whether Questcor's Synacthen acquisition is anti-competitive. The [points raised in Citron's article last week](#) are relevant to the FTC's inquiry, demonstrating Questcor's intent to suppress competition by acquiring Synacthen is exposed by their own sell-side analysts.

We are sure that Questcor will now try to posture to the FTC that Synacthen is a completely different drug, arguing that while it has similarities, it cannot be regarded as a replacement for HP Acthar Gel. This piece of evidence presented below is for the FTC, so shareholders please cover your eyes.

In 2012, when Questcor was just ramping up its nephrology sales initiative, it issued commentary on a scientific study it cited on [www.acthar.com](http://www.acthar.com), which it referenced as the primary study demonstrating efficacy for Acthar in treating Nephrotic Syndrome. It is important to note that sales of Acthar for Nephrotic Syndrome, which began in earnest only two years ago, have risen to levels now representing 35-40% of all sales of Acthar – a sum greater than Questcor's total revenues as recently as early 2011.

The cover-up here that Questcor does not want you to know (or remember, in the case of Citron) is that the referenced study for Nephrotic Syndrome specifically stated that **Synacthen -- not Acthar** was the drug used in the trial! So at that time, Questcor was justifying Acthar's use for Nephrotic conditions **specifically because it was a correlate to Synacthen**, which wasn't available in the United States.

Questcor will have to learn the hard way: you cannot rewrite history or deceive the government simply by eliminating information from your website. After this type of cover-up, we can only imagine how many emails have been destroyed.

 **So look carefully: Questcor claims Acthar lowers proteinuria in Nephrotic Syndrome (NS), but in the actual study, “synthetic ACTH analogue” e.g. Synacthen is the drug being used!**

http://www.acthar.com/nshcp/acthar-effectively-lowers-proteinuria-nephrotic-syn Go FEB MAR OCT 25 2011 2012 2013

3 captures 25 Mar 12 - 19 Oct 13

Return to Acthar.com

H.P. Acthar GEL (repository corticotropin injection) 80 U/mL For Healthcare Professionals

Home Acthar and NS How to Get Acthar Prescribing Information Educational Resources

The Power to Lower Proteinuria

► Efficacy

Multiple Potential Mechanisms of Action

Dosing and Administration

Safety

Comprehensive Patient Support

References

### Acthar Effectively Lowers Proteinuria in NS

The majority of patients achieved a complete or partial remission with Acthar in a recent case series\*<sup>[1]</sup>

Acthar is indicated for inducing a diuresis or a remission of proteinuria in the nephrotic syndrome without uremia of the idiopathic type or that due to lupus erythematosus.

In a subset of 10 patients with NS due to idiopathic membranous nephropathy from a retrospective case series:

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- On average, patients experienced a 4084-mg/day drop in proteinuria with Acthar from baseline (mean baseline proteinuria: 6621 mg/day)
- All 10 patients had failed an average of 2 immunosuppressive regimens<sup>[1]</sup>

**Previously failed immunosuppressive regimens<sup>1</sup>**

Steroids
Calcineurin inhibitor
Cyclophosphamide
Mycophenolate mofetil

NS = nephrotic syndrome.\*Results from a retrospective case series of 21 NS patients with varying etiologies (idiopathic membranous nephropathy, minimal change disease, focal segmental glomerulosclerosis, immunoglobulin A, systemic lupus erythematosus class V). †Complete remission is defined as stable or improved renal function with final proteinuria falling to <500 mg/day. Partial remission is defined as stable or improved renal function with ≥50% reduction in proteinuria and final proteinuria 500–3500 mg/day.

#### ACTH Efficacy Comparable to the Ponticelli Regimen

In a trial comparing synthetic ACTH analogue to the Ponticelli regimen in 32 patients with NS due to idiopathic membranous nephropathy<sup>‡[2]</sup>:

- Most patients responded to either treatment with no significant differences (93% with Ponticelli regimen vs 87% with synthetic ACTH analogue)

<https://web.archive.org/web/20120325204133/http://www.acthar.com/nshcp/acthar-effectively-lowers-proteinuria-nephrotic-syndrome>

[ Our gratitude to archive.org for preserving the past in these types of cases. Over a 13 year span it has become an invaluable resource for exposing corporate wrongdoing. – Editor ]

Since Questcor's bid to acquire the rights to Synacthen for the U.S. and multiple other countries in June 2013, this page has been removed from the Acthar website. But it was very much on display in March and October 2012. With Synacthen available for less than \$10 a vial, while Acthar is being sold for north of \$28,000, what conceivable chance is there that the FTC can ignore that this acquisition is inherently anti-competitive? This issue goes right to the heart of Senator Klobuchar's request for an FTC investigation of this acquisition. [See the full letter here.](#)

## **And While the SEC is looking at Questcor, they should look at their online mouthpiece as well for REG FD Violations**

In late October 2013 after a Barron's article disclosed to the markets Questcor's involvement with the troubled Chronic Disease Fund, a long-standing and highly questionable relationship at that, a sharp Seeking Alpha writer explored this troubled partnership in greater details.

<http://seekingalpha.com/article/1760862-questcor-and-the-chronic-disease-fund-is-free-drug-truly-free>

Nearly instantly after this article was published, online rebuttals were posted from a gentleman using the handle of "Pharmaman58". This particular poster has been a long-time online mouthpiece for Questcor, always claiming he is long the stock, and passionately countering arguments of skeptics, often with information that confers on him the authority of "the go-to guy" on message boards for Questcor stock on Yahoo, Seeking Alpha, and stock trading websites. Turns out that "Pharmaman58" is none other than Gary Schueler, the President of Pharma International in Syracuse. His company offers market research and web development services for ... pharmaceutical companies! <http://www.pharma-ii.com/team.html>

However, in this particular response about the Chronic Disease Fund, which we now know to be a hot-button issue for Questcor, he overplayed his hand.

In this response to the Chronic Disease Fund article, **posted just 3 hours after the article's release** ( <http://seekingalpha.com/article/1760862-questcor-and-the-chronic-disease-fund-is-free-drug-truly-free> ) Schueler posted the below comments using language that would appear in Questcor's public SEC filings only eight days later. Simply put, Gary was quoting out of Questcor's 10-Q **8 days before the Q was filed**. So unless Mr. Schueler writes about Questcor with a Ouija board, he was provided with several paragraphs of unpublished 10-Q language -- direct from Questcor management -- prior to publication.

Pharmaman58's most interesting post is on seekingalpha.com is here:  
<http://seekingalpha.com/user/5190151/comments>

In particular, look carefully at these two paragraphs below:

Pharmaman58:

“Here is the language from Questcor SEC filings around the CDF and NORD, two not-for-profits the company supports:

Questcor provides free vials of Acthar, to support a patient assistance program administered by the National Organization of Rare Disorders, or NORD. From September 2007 through June 30, 2013, the commercial value of Acthar vials provided through this program approximates \$360 million. This value is based on our selling price at the time, though the vials are not sold, and we do not recognize any revenue or net sales from this Acthar free drug program.

Separately, Questcor makes charitable contributions, in dollars, to the Chronic Disease Fund, which administers co-pay assistance programs. In the quarter ended June 30, 2013, Questcor contributed approximately \$3.1 million to the Chronic Disease Fund in support of its co-pay assistance programs. Amounts provided to the Chronic Disease Fund result in a deduction from Questcor's gross revenue in the calculation of its net sales, as disclosed in the Management's Discussion and Analysis of Results of Operations and Financial Condition section.”

Oct 22 05:48 PM

Good of him to share the information from Questcor's SEC filings, doncha think? **The only problem is that as of the date of that post, Questcor had never ever written any such language in its SEC filings, ever.**

This became more interesting when just eight days later, on October 30, 2013, Questcor filed its 10-Q, which contained the following paragraphs, disclosure language never previously used:

We provide free vials of Acthar, to support a patient assistance program administered by the National Organization of Rare Disorders, or NORD. For the three and nine months ended September 30, 2013, the commercial value of Acthar vials provided through this program was approximately \$46 million and \$130 million, respectively. This value is based on our selling price at the time vials are provided, though the vials are not sold, and we do not recognize any revenue or net sales from this program.

Separately, we make charitable contributions, in dollars, to the Chronic Disease Fund, which administers co-pay assistance programs. For the three and nine months ended September 30, 2013, we contributed approximately \$3.1 million and \$9.0 million, respectively, to the Chronic Disease Fund in support of its co-pay assistance programs. Amounts provided to the Chronic Disease Fund result in a deduction from our gross revenue in the calculation of our net sales. See Item 2. Management's Discussion and Analysis of Results of Operations and Financial Condition.

<http://www.sec.gov/Archives/edgar/data/891288/000125582313000027/qcor-2013930x10q.htm>

**There is simply no way Gary Schueler could have received the content of the above post without a direct relationship to Questcor's management. Therefore, he would be required, under SEC rule 10b-5 and Rule FD, to disclose that relationship, and his position in Questcor's stock, in each and every post he has made on a public forum.**

By revising the definition in this manner, we provide that the regulation will cover senior management, investor relations professionals, and others who regularly interact with securities market professionals or security holders.<sup>36</sup> Of course, neither an issuer nor such a covered person could avoid the reach of the regulation merely by having a non-covered person make a selective disclosure. Thus, to the extent that another employee had been directed to make a selective disclosure by a member of senior management, that member of senior management would be responsible for having made the selective disclosure.

<http://www.sec.gov/rules/final/33-7881.htm>

Enterprising Gary saw an opportunity when Questcor's MS sales started flattening out, and they began a big push on Nephrotic Syndrome conditions to replace them. As well, we found Gary Schueler posting on <http://www.nephcure.org> ... here he is <http://www.nephcure.org/blog-pharmaman58> suggesting potential patients go search out Acthar as a treatment. So he's advocating the drug to potential patients as well as the stock to potential investors. Is he a drug marketing guy, or a stock commentator? Or both? Does Gary have a financial relationship to the company or does he just have an "inside track"??? Inquiring minds will want to know ... especially those at the SEC.

## Conclusion

It is Citron's firm belief that a regulatory noose is tightening around Questcor, and that the company and its officers are soon going to find themselves in an unviable position with regard to maintaining the cash flow from exploiting Acthar at the questionable fringes of health insurance reimbursement policies. Citron thinks the time it will be able to keep Synacthen (a \$10 competitor) or another generic version of ACTH out of the US the market will be far too short to support the lofty multiples afforded to the stock by its cheerleader analysts. Meanwhile the company has gotten too deeply into bed with some really shady characters, and has become far too reliant on reimbursement strategies that may be running afoul of laws in multiple Federal jurisdictions, including Federal tax law (especially as it applies to non-profits), the FTC's anti-kickback law, as well as the SEC disclosure and FTC anti-monopoly jeopardies described above.

And the worst of it may be Medicare billing fraud (to be discussed in later articles). That one is really, really serious – involving criminal liability.

So when the company sends its attorneys to try to intimidate investigators from inquiring into the operations of one "Chronic Disease Fund" – the very same entity in the disclosure language published by "Pharmaman58" -- before the company even filed its 10-Q .... Well, the whole thing just begins to smell.

Stand by for more. We're sure this is not the last word on Questcor.



**Cautious Investing to all.**