IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BAXTER HEALTHCARE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 18-303-RGA
	)	
HOSPIRA, INC. and ORION CORP.,	)	
	)	
Defendants.	)	

[PROPOSED] PROTECTIVE ORDER

Whereas this is a case involving a patent dispute relating to the drug dexmedetomidine hydrochloride injection;

Whereas discovery in this action may involve the disclosure of certain documents, things and information (including electronically stored information) in the possession, custody or control of a party or a non-party that constitute or contain trade secrets or other confidential research, development, manufacture, regulatory, financial, marketing or other competitive information within the meaning of Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure or contain information involving privacy interests of individuals; and

Whereas the parties have in good faith conferred and have agreed upon the terms of a Protective Order and for good cause shown; therefore

The parties stipulate, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, subject to the approval of the Court, to the following Protective Order:

1. Scope of Protection.

1.1 This Protective Order shall govern any record of information, designated pursuant to ¶ 3 of this Protective Order, produced in this action, including, without limitation, all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all

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designated interrogatory answers, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

1.2 This Protective Order shall also govern any designated record of information produced, exchanged, or served in this action pursuant to required disclosures under any federal procedural rule or District of Delaware Local Rules, and any supplementary disclosures thereto.

1.3 This Protective Order shall apply to the parties and any non-party from whom discovery may be sought and who desires the protection of this Protective Order. If an additional party unrelated to Baxter Healthcare Corporation, Hospira, Inc., or Orion Corp. (or a successor in interest to any of them) joins or is joined in this action, the newly joined party shall not have access to documents or other information produced under protection of this Protective Order until the parties agree to a supplemental protective order.

2. Definitions.

2.1 As used herein, the terms "CONFIDENTIAL" and "CONFIDENTIAL INFORMATION" (which are used herein interchangeably and are synonymous with one another) mean any information used by a party or non-party in or pertaining to its business, which information is not publicly known, including any form of trade secret or other confidential research, development, or commercial information within the meaning of Fed. R. Civ. P. 26(c)(1)(G). Information shall be designated CONFIDENTIAL INFORMATION if the information constitutes any non-public information actually exchanged by the parties during discovery, regardless of whether this information relates to dexmedetomidine hydrochloride products. This includes, but is not limited to: (i) any approved or unapproved (whether pending or not yet filed) new drug application or abbreviated new drug application that purports to cover

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any dexmedetomidine hydrochloride injection product ("Dexmedetomidine Drug Application"); (ii) any correspondence with the FDA regarding any Dexmedetomidine Drug Application; (iii) drafts of items (i) or (ii) above; (iv) sensitive, and/or proprietary information pertaining to marketing, sales, revenues, or profits, or any scientific or technical information relating to the research and development of a dexmedetomidine hydrochloride injection product, or to any existing products or products in development; and/or (v) any document attaching any of items (i)-(iv) of this ¶ 2.1. The designation of "CONFIDENTIAL" or "CONFIDENTIAL INFORMATION" by a party or non-party who seeks to invoke protection under this Protective Order ("Producing Party") constitutes its representation that it reasonably and in good faith believes that the designated material constitutes or contains information as described above.

2.2 CONFIDENTIAL INFORMATION shall include: (a) all copies, extracts, and complete or partial summaries prepared from such CONFIDENTIAL INFORMATION; (b) portions of deposition transcripts and exhibits thereto that contain, summarize, or reflect the content of any such CONFIDENTIAL INFORMATION; (c) portions of briefs, memoranda, or any other writings filed with the Court and exhibits thereto that contain, summarize, or reflect the content of any such CONFIDENTIAL INFORMATION; (d) written discovery responses, answers, and/or contentions that contain, summarize, or reflect the content of any such CONFIDENTIAL INFORMATION; and (e) deposition testimony designated in accordance with the paragraphs below.

3. Designation.

Each party shall have the right to designate information as CONFIDENTIAL, subject to this Protective Order. It shall be the duty of the Producing Party to give notice, in accordance with the provisions of this Protective Order, of the information designated to be covered by this

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Protective Order. To the extent that material is marked CONFIDENTIAL, such material shall only be revealed to or used by limited categories of individuals, as provided for herein, and shall not be communicated in any manner, either directly or indirectly, to any person or entity not permitted disclosure pursuant to this Protective Order. Any copies of such material, abstracts, summaries or information derived therefrom, and any notes or other records regarding the contents thereof, shall also be deemed CONFIDENTIAL accordingly, and the same terms regarding confidentiality of these materials shall apply as apply to the originals.

4. Marked Documents and Things.

4.1 Each page of a document and each thing that constitutes or contains CONFIDENTIAL INFORMATION shall be labeled or marked with the legend "CONFIDENTIAL," "CONFIDENTIAL – PROTECTIVE ORDER MATERIAL" or "CONFIDENTIAL INFORMATION – PROTECTIVE ORDER MATERIAL" when the document or thing is produced to the receiving parties. Anything that cannot be so labeled or marked on its face shall be labeled or marked by placing the appropriate legend on a container or package in which it is produced or on a tag attached thereto. Material produced without any such legend clearly indicating that it is subject to this Protective Order shall not be subject to the protections afforded to such information under this Protective Order unless otherwise agreed by the parties, ordered by the Court, or designated in accordance with ¶ 16 of this Protective Order.

4.2 Should a party opt to make materials available for inspection in response to a discovery request, such inspection shall be conducted on an outside-counsel-eyes-only basis. Once produced, such materials shall be treated by the receiving parties in accordance with any confidentiality designation made at the time of their production.

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4.3 Documents and things produced or made available for inspection may be subject to redaction, in good faith by the Producing Party, of information that is neither relevant to the subject of this litigation nor reasonably calculated to lead to the discovery of admissible evidence, or is subject to the attorney-client privilege or to work-product immunity. Each such redaction, regardless of size, shall be clearly labeled as redacted. Information involving the privacy interests of one or more individuals or subject to data privacy restrictions (such as social security numbers, dates of birth, private addresses or telephone numbers, or other personal information) can be redacted in accordance with the provisions of this paragraph. This paragraph shall not be construed as a waiver of any party's right to seek disclosure of redacted information. All documents redacted based on attorney-client privilege or work-product immunity shall be listed on a privilege log in accordance with Federal Rule of Civil Procedure 26(b)(5).

5. Limit On Use And Disclosure Of Designated Information.

5.1 The production of CONFIDENTIAL INFORMATION by a party under the terms of this Protective Order shall not be construed to mean that the Producing Party has waived any objection to the production, relevancy or admissibility of such information. Nothing contained herein shall preclude any party from opposing any discovery on any basis. Further, nothing in this Protective Order constitutes an admission by any party that any specific item of CONFIDENTIAL INFORMATION is a trade secret or otherwise confidential and proprietary to a party.

5.2 Each party and all persons bound by the terms of this Protective Order shall use any information or document designated CONFIDENTIAL only in connection with the prosecution or defense of this action, except by consent of the parties or order of the Court. Such use includes, but is not limited to, offering evidence and testimony at trial and/or other hearings, preparing for and conducting discovery, preparing for trial, and supporting or opposing any motion in this action.

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