

EXHIBIT 2.2.2
EVIDENCE OF USAGE CONFIRMATION CRITERIA

For the elements of the Program that require a showing of Vioxx ingestion (e.g., Proximity Gate, Duration Gate, Overall Duration--as defined in Exhibit 3.2.1-- analysis), evidence of such Vioxx usage must be established in the following manner:

1. *Pharmacy Records.* The Program Claimant must produce contemporaneous Pharmacy Records showing the Product User had valid prescriptions or refills under which pills had been dispensed (credit will only be given for the number of pills actually dispensed); or
2. *Contemporaneous Medical Records When Pharmacy Records Destroyed.* In the event the Product User's pharmacy records no longer exist because said records were destroyed pursuant to a records retention policy, natural disaster, or some other reason independent of the Program Claimant or Product User, the Program Claimant must produce an affidavit or other notarized evidence from all applicable pharmacies that records evidencing the prescription of Vioxx for the Product User no longer exist and stating the reason such records do not exist. An "applicable pharmacy" is a pharmacy for which evidence exists that the Product User previously filled his or her Vioxx prescriptions at that facility (e.g., references in insurance records, pill bottles, references in medical records; etc.). Program Claimants must provide other contemporaneous medical records documenting the Product User's Vioxx use to be eligible for this program, and the amount of such usage shall be determined pursuant to Section 5(A) of this section; or
3. *Samples.* Program Claimants relying on sample usage to meet an element of the Program that requires a showing that the Product User ingested Vioxx (e.g., Proximity Gate, Duration Gate, Overall Duration analysis) must provide contemporaneous documentation (in physician or hospital records) that the Product User was given samples in a specific quantity (credit will only be given for the number of pills noted as dispensed). If no specific quantity is noted, then the Product User will be presumed to have received 8 days of pills for each notation of samples dispensed. However, no more than a total of 30 days of pills may be presumed for a Program Claimant.
4. *Appropriate Usage.* Vioxx must have been legally provided to the Product User by a health care provider.
5. *Limited Documentation Exception:*

(A) If the Program Claimant is unable to satisfy documentation requirements (including either the Proximity Gate or the Duration Gate) based on the Product User's pharmacy records, the Program Claimant may elect to offer contemporaneous compelling evidence of usage to the Claims Administrator who will determine whether Program Claimant has established that the Product User took Vioxx as alleged and, if so, the Overall Duration which should be credited. In review of the evidence, the Claims Administrator shall be required to follow the following guidelines:

1. There must be medical records contemporaneous to the usage and the Eligible Event corroborating that there was Vioxx usage at the time alleged by the Program Claimant exceeding what is reflected in available pharmacy records;
2. Medical records contemporaneous to the usage and/or Eligible Event must corroborate that the Vioxx which Program Claimant alleges was received must have been legally provided to the Product User by a health care provider. For example, a Program Claimant cannot establish evidence of usage based on prescriptions or samples provided to friends, co-workers, or family members of the Product User, or otherwise outside a healthcare provider-patient relationship;
3. The alleged usage may not be inconsistent with the PME Records or other evidence. For example, a Program Claimant who alleges they received 30 samples shall not be able to demonstrate evidence of usage if the medical records provide that Product User received only 10 samples.

(B) A Program Claimant (and Counsel for the Program Claimant) who seeks to meet the Eligibility Requirements (including either the Proximity Gate or the Duration Gate) through the provision set forth in Section A shall be subject to dismissal with prejudice and shall be liable for sanctions and/or costs and legal expenses should the Special Master determine that Program Claimant's or Counsel's attempt to satisfy documentation requirements involved any form of deception, dishonesty, or fraud.