



## **NextWave Pharmaceuticals Code of Ethics and Business Conduct**

This Code of Ethics Business Conduct ("Code") covers a wide range of business practices and procedures. It does not cover every issue that may arise, but sets out basic principles to guide officers and employees of NextWave Pharmaceuticals, Inc. (the "Company"). All of our officers and employees must conduct themselves in accordance with this Code and seek to avoid even the appearance of improper behavior.

This Code will be strictly enforced. All officers are required to enforce this policy and are not permitted to sanction or condone violations. There will be serious adverse consequences for non-adherence to the Code, which may include removal from a position as officer, and dismissal as an employee of the Company. If you are in a situation which you believe may violate or lead to a violation of this Code, you should follow the procedures described in Sections 17-19 of this Code.

### **1. Compliance with Laws**

Obeying the law, both in letter and in spirit, is the foundation on which this Company's ethical standards are built. All officers and employees must obey the laws of the cities, states and countries in which we operate. Although not all employees are expected to know the details of these laws, it is important to know enough to determine when to seek advice.

### **2. Ethical Conduct**

Beyond compliance with laws, the Company requires that all its officers and employees act in a manner which meets the highest standards of ethical behavior. This includes the obligation to avoid any actual or apparent conflicts of interest in personal and professional relationships. The honesty and integrity of the Company's business conduct must not be compromised. The Company will not condone ethical violations for the sake of personal gain, personal advantage, expediency or perceived business advantage.

### **3. Scientific Integrity**

Research integrity is fundamental to the scientific process and to the Company's ability to bring pharmaceutical products to market. All research and development must be conducted according to applicable laws and regulations and to the generally accepted ethical standards of the scientific community. Scientific misconduct, such as fabrication, falsification, or plagiarism in proposing, conducting or reporting research, disregards the intellectual contributions and property of others, impedes the progress of research and corrupts the scientific record and is prohibited.

### **4. Accounting, Auditing Matters and Public Disclosure Obligations**

The Company's requirement that officers and employees follow the highest ethical standards applies directly to all actions which involve business accounting, financial reporting, internal accounting controls, auditing matters and public disclosure obligations. Full, fair, accurate, timely and understandable disclosure is required in all reports and documents that the Company files with, or submits to, the Board of Directors, any governmental agencies, and in any public communications. The Management Team of the Company has adopted special procedures for the receipt, retention and treatment of complaints



regarding accounting, internal accounting controls or auditing matters. These procedures are set out in Sections 18 and 19 of this Code.

## 5. Conflicts of Interest

Any direct or indirect conflict of interest between the Company and any officer or employee is prohibited unless otherwise consented to by the Company. The Company believes that it is in its best interests and is consistent with the obligations of officers and employees to the Company to establish a policy that all business decisions will reflect independent judgment and discretion, uninfluenced by any considerations other than those honestly believed to be in the best interests of the Company and its shareholders. Any decision will be deemed to be in conflict with the interests of the Company if, in the course of affiliation with the Company, the judgment and discretion of an officer or employee is or may be influenced by considerations of personal gain or benefit, or gain or benefit to a third party, whether or not affiliated with the officer or employee. The divided loyalty that is present when an officer or employee has a conflict of interest could potentially lead to serious problems for the Company and could be grounds for disciplinary action or termination by the Company. It is not possible to describe every situation or occurrence that could lead to a conflict of interest between an officer or employee and the Company. The following events are intended to describe, by way of example, situations that could occur that could lead to a conflict of interest with the Company:

- Relationships with Customer or Competitors: Stock ownership by an employee and other financial interests or participation on the part of an employee in any customer, supplier or competitor of the Company will need to be reported to the Chief Financial Officer.
- Indirect Interests and Relationships: A conflict of interest can arise because of the business activities of an affiliate of an officer or employee. The term affiliate includes close family members and family members who live in the same household as an officer or employee. An officer or employee has a potential conflict of interest whenever his or her affiliate has a significant interest in a transaction or a significant relationship with any customer, supplier or competitor of the Company. The officer or employee should not make or influence any decision which could directly or indirectly benefit his or her affiliate and in order to protect the officer or employee and the Company from the appearance of a conflict of interest, all relationships of this nature will need to be reported to the Chief Financial Officer.
- Gifts, Loans and Entertainment: An officer or employee will not accept gifts (including trips and outings) from competitors or from anyone having or seeking business with the Company, other than non-cash gifts of nominal value generally used for promotional purposes by the giver or accept loans from any person having or seeking business with the Company (other than loans from banks or financial institutions at prevailing market rates and terms). As a rule of thumb, any gifts with value in excess of \$100 will not be considered as nominal.
- Participation in business-related functions: Participation in business related functions is permitted, including the acceptance of lunches or other meals. However, each officer or employee should exercise care to ensure that such functions are necessary and related to the conduct of business on behalf of the Company. If in doubt, the Corporate Compliance Officer should be consulted.
- Outside Business Activities: As a general rule, the Company does not allow its employees to participate or engage in business activities outside of their employment with the Company. As a



general rule, participation on a part-time or other basis in any outside business or employment will be a conflict of interest if the officer or employee's participation in that business could interfere with his or her ability to devote proper time and attention to his or her employment with the Company. Employees who are considering secondary employment must first get written approval from the Company President. Under no circumstance will any employee be allowed to work for another pharmaceutical company where there may be a conflict of interest.

- Non-business Activities: Participation in the activities of a trade association, professional society, charitable institution or governmental institution, on a non-compensated basis, or holding a part-time public office (with or without compensation) will not generally create a conflict of interest in violation of this Code. However, if any officer or employee is unsure of his or her particular situation; the Corporate Compliance Officer should be consulted.
- Personal Use of Company Property and Company Information: It is against Company policy for any officer or employee to use or divert any Company property, including services of other employees, for his or her own advantage or benefit, or to use Company letterhead when writing personal correspondence.

Prior to engaging in a transaction or activity that would present a conflict of interest, consent of the Company must be obtained. The proper source of that consent will depend on your position in the Company. If you are an officer of the Company, such consent must be obtained from the President of the company. If you are not an officer please consult with the Corporate Compliance Officer to determine how to obtain the necessary consent.

## **6. Insider Trading**

Officers and employees who have access to confidential information are not permitted to use or share that information for stock trading purposes or for any other purpose except the conduct of the Company's business and in strict conformity with all applicable laws and regulations. All non-public information about the Company should be considered confidential information. To use non-public information for personal financial benefit or to "tip" others who might make an investment decision on the basis of this information is not only unethical but also illegal. If you have any questions, please consult the Company's Chief Financial Officer.

## **7. Corporate Opportunities**

All officers are prohibited from taking for themselves opportunities that are discovered through the use of corporate property, information or position without the consent of the Board of Directors. No officer or employee may use corporate property, information or position for improper personal gain or compete with the Company either directly or indirectly. Officers and employees owe a duty to the Company to advance the Company's legitimate interests when the opportunity to do so arises.

## **8. Competition and Fair Dealing**

The Company seeks to outperform its competition fairly and honestly. The Company seeks competitive advantages through superior performance, never through unethical or illegal business practices. Stealing proprietary information, possessing trade secret information that was obtained without the owner's consent or inducing such disclosures by past or present employees of other companies is prohibited.



Each employee should endeavor to respect the rights of and to deal fairly with the Company's customers, suppliers, competitors and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other intentional act or practice. The purpose of business entertainment and gifts in a commercial setting is to create goodwill and sound working relationships, not to gain unfair advantage with customers or suppliers. Employees should discuss with the Company President or Corporate Compliance Officer any gifts or proposed gifts of which they are not certain are appropriate.

### **9. Discrimination, Harassment and Retaliation**

The diversity of the Company's employees is a tremendous asset. We are firmly committed to providing equal opportunity in all aspects of employment and will not tolerate discrimination, harassment or retaliation. The Company's policy against discrimination applies to any legally protected status, including race, color, gender, religion, national origin, disability, veteran status and age. This policy also prohibits discrimination against any person who provides information to a federal regulatory or law enforcement agency, a member of Congress or any committee of Congress or to a supervisor concerning conduct which the employee reasonably believes constitutes a violation of securities laws or any provision of federal law relating to fraud against shareholders. The Company also prohibits discriminatory harassment of any employee covered by the policy against discrimination. No officer or employee may retaliate against an individual for bringing a complaint of discrimination or for participating in an investigation or proceeding involving a complaint of discrimination. No one may take any action harmful to any person for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense.

### **10. Health and Safety**

The Company strives to provide each employee with a safe and healthy work environment. Each employee has responsibility for maintaining a safe and healthy workplace for all employees by following safety and health rules and practices and reporting accidents, injuries and unsafe conditions. Violence and threatening behavior are not permitted. Employees should report to work in condition to perform their duties, free from the influence of illegal drugs or alcohol. The use of illegal drugs in the workplace will not be tolerated.

### **11. Record-Keeping**

The Company requires honest and accurate recording and reporting of information in order to make responsible business decisions. For example, only the true and actual number of hours worked should be reported. Many employees regularly use business expense accounts, which must be documented and recorded accurately. If you are not sure whether a certain expense is legitimate, ask the Company President or the Corporate Controller. All of the Company's books, records, accounts and financial statements must be maintained in reasonable detail, must appropriately reflect the Company's transactions and must conform to applicable legal requirements, generally accepted accounting principles and the Company's system of internal controls. Further, it is prohibited under federal law and Company policy to fraudulently influence, coerce, manipulate or mislead the Company's independent public accountants for the purpose of rendering the Company's financial statements materially misleading. Full, fair, accurate, timely and understandable disclosure is required in all reports and documents that the



Company files with, or submits to, any governmental agencies. Business records and communications often become public and officers and employees should avoid exaggeration, derogatory remarks, guesswork or inappropriate characterizations of people and companies that can be misunderstood. This applies equally to e-mail, internal memos and formal reports. Records should always be retained or destroyed according to the Company's record retention policies. In accordance with those policies, in the event of litigation or governmental investigation, please consult the Company's President or Corporate Compliance Officer.

## **12. Confidentiality**

Employees must maintain the confidentiality of the information entrusted to them by the Company or its customers, except when disclosure is authorized by the Company President, Corporate Compliance Officer, the HR Manager, or required by law. Confidential information includes all non-public information that might be of use to competitors or harmful to the Company or its customers, if disclosed. It also includes information that suppliers and customers have entrusted to us and even the identities of our trading partners. The obligation to preserve confidential information continues even after employment ends.

## **13. Protection and Proper Use of Company Assets**

All employees should endeavor to protect the Company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the Company's profitability. Any suspected incident of fraud or theft should be immediately reported to the Company President, Corporate Compliance Officer, or the HR Manager for investigation. The obligation of employees to protect the Company's assets includes the Company's proprietary information. Proprietary information includes intellectual property such as trade secrets, patents, trademarks and copyrights, as well as business, marketing, product development and service plans, records, salary information and any unpublished financial data and reports. Unauthorized use or distribution of this information would violate Company policy. It could also be illegal and result in civil or even criminal penalties.

## **14. Payments to Government Personnel**

The U.S. Foreign Corrupt Practices Act prohibits giving anything of value, directly or indirectly, to officials of foreign governments or foreign political candidates in order to obtain or retain business. It is strictly prohibited to make illegal payments to government officials of any country. In addition, the U.S. government has a number of laws and regulations regarding business gratuities which may be accepted by U.S. government personnel. The promise, offer or delivery to an official or employee of the U.S. government of a gift, favor or other gratuity in violation of these rules would not only violate Company policy but could also be a criminal offense. State and local governments, as well as foreign governments, may have similar rules.

## **15. Political Contributions**

While the Company strongly believes in the importance of participating in the democratic process, contributions by the Company are regulated by election laws. Any contribution of Company assets or services for political purposes must be reviewed by the Company President. If any of the Company's customers request that the Company make a political contribution, it is essential that prior approval is



given by the Company President before any contribution is made. Under no circumstances shall the Company make a political contribution to any federal candidates.

#### **16. Change or Waivers of the Code of Business Conduct and Ethics**

Any change or waiver of this Code for executive officers or employees may be made only by the Board of Directors and will be promptly disclosed as required by law. Consents sought and obtained in accordance with the requirements of this Code are not considered waivers.

#### **17. Personal Responsibility**

It is essential that the Company ensures prompt and consistent action against violations of this Code. However, in some situations it is difficult to know right from wrong. Since officers and employees cannot anticipate every situation that will arise, it is important to have guidelines on how to approach a new question or problem. These are the steps to keep in mind:

- Make sure you have all the facts. In order to reach the right solutions, we must be as fully informed as possible.
- Ask yourself: What specifically am I being asked to do? Does it seem unethical or improper? This will enable you to focus on the specific question you are faced with and the alternatives you have. Use your judgment and common sense; if something seems unethical or improper, it probably is.
- Clarify your responsibility and role. In most situations, there is shared responsibility. Are your colleagues informed? It may help to get others involved and discuss the problem.
- Discuss the problem with the Company President or the Corporate Compliance Officer. This is the basic guidance for all situations. In many cases, they will be more knowledgeable about the question and will appreciate being brought into the decision-making process. Remember that it is their responsibility to help solve problems.
- Seek help from Company resources. If you believe that it is not appropriate to discuss an issue with the Company President or Corporate Compliance Officer, call the Secretary of the Board of Directors.
- You may report ethical violations in confidence and without fear of retaliation. If your situation requires that your identity be kept secret, your anonymity will be protected. The Company does not permit retaliation of any kind against employees for good faith reports of ethical violations.
- Always ask first, act later: If you are unsure of what to do in any situation, seek guidance before you act.

#### **18. Reporting/Compliance Procedure**

Every employee and officer has the responsibility to ask questions, seek guidance, and report suspected violations and express concerns regarding compliance with this Code. Any employee or officer who knows or believes that any other employee or representative of the Company has engaged or is engaging in Company-related conduct that violates applicable law or this Code should report such information to his or her supervisor or to the Corporate Compliance Officer, as described below. You may report such conduct openly or anonymously without fear of retaliation. The Company will not discipline, discriminate



against or retaliate against any employee who reports such conduct (unless it is determined that the employee made the report with knowledge that it was false) or who cooperates in any investigation or inquiry regarding such conduct. Any supervisor who receives a report of a violation of this Code must immediately inform the Company President or Corporate Compliance Officer.

You may report violations of this Code, on a confidential or anonymous basis, by contacting the Corporate Compliance Officer by mail, fax or e-mail at: NextWave Pharmaceuticals, Inc., 20450 Stevens Creek Blvd., Suite 150, Cupertino, CA., 95014, ph.: (408) 342-1300, fax: (408) 342-1400.

In addition, the Company has established a NextWave Pharmaceuticals Compliance Hotline toll-free telephone number 1-877-874-8416 where you can report any violation or suspected violation of this Code. All calls to the NextWave Pharmaceuticals Compliance Hotline are reported simultaneously to the Compliance Committee.

While we prefer that you identify yourself when reporting violations so that we may follow up with you, as necessary, for additional information, you may make a report anonymously if you wish. If the Compliance Committee receives information regarding an alleged violation of this Code, it shall, as appropriate, (a) evaluate such information, (b) if the alleged violation involves an executive officer, inform the Company President and Board of Directors of the alleged violation, (c) determine whether it is necessary to conduct an informal inquiry or a formal investigation and, if so, initiate such inquiry or investigation and (d) report the results of any such inquiry or investigation together with a recommendation as to disposition of the matter to the Company President for action, or if the alleged violation involves an executive officer, report the results of any such inquiry or investigation to the Board of Directors or a committee thereof.

Employees and officers are expected to cooperate fully with any inquiry or investigation by the Compliance Committee regarding an alleged violation of this Code. Failure to cooperate with any such inquiry or investigation may result in disciplinary action, up to and including discharge. The Compliance Committee shall determine whether violations of this Code have occurred and, if so, shall determine the disciplinary measures to be taken against any employee who has violated this Code. In the event that the alleged violation involves an executive officer, the Company President, or a member of the Board of Directors, the Company Compliance shall work with the Board of Directors Compliance Committee to determine whether a violation of this Code has occurred and, if so, shall determine the disciplinary measures to be taken against such executive officer. Failure to comply with the standards outlined in this Code will result in disciplinary action including, but not limited to, reprimands, warnings, probation or suspension without pay, demotions, and reductions in salary, discharge and restitution. Certain violations of this Code may require the Company to refer the matter to the appropriate governmental or regulatory authorities for investigation or prosecution. Moreover, any supervisor who directs or approves of any conduct in violation of this Code, or who has knowledge of such conduct and does not immediately report it, also will be subject to disciplinary action, up to and including discharge.

#### **19. Procedures for Submitting Confidential, Anonymous Complaints Regarding Accounting and Auditing Matters**

As an alternative to the procedures described in Section 18, any employee who reasonably believes that there has been a material violation of this Code caused by questionable accounting or auditing matters



has the right to submit a confidential, anonymous complaint via the Company's Compliance Hotline. The complaint should contain sufficient information so that a reasonable investigation can be conducted.

**20. Dissemination and Amendment**

This Code shall be distributed to each new employee and officer of the Company upon commencement of his or her employment or other relationship with the Company and shall also be distributed each time the Code is revised or updated. Each employee and officer shall certify that he or she has received, read and understood the Code and will comply with its terms. The Company reserves the right to amend, alter or terminate this Code at any time for any reason. The most current version of this Code can be found on the Company's website. This document is not an employment contract between the Company and any of its employees or officers.

**Certification**

I have received, read and understood NextWave Pharmaceuticals' Code of Business Conduct and Ethics and will comply with the Code.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_