BRYAN CAVE
A Broader Perspective

Bulletin

**To: Our Clients and Friends** **July 6, 2010**

# Pharmaceuticals, Medical Devices and Biologics Regulatory and Policy Bulletin

## *Top News*

### House Approves Measure to Ban Pay-for-Delay Agreements

The US House of Representatives has approved a provision, included as an amendment to the war funding bill, that would prevent drugmakers from entering into "pay-for-delay" agreements with generic manufacturers. The FTC has called such agreements anti-competitive and stated that they keep generic drugs off the market. Manufacturers have stated that some agreements that would be covered by the provision help to reduce litigation costs and bring generics to market sooner, and that the provision does not distinguish between such pro-competitive agreements and non-competitive ones.

### HHS Inspector General Releases Report on Foreign Clinical Trials

The Inspector General of the Department of Health and Human Services has released a report detailing the number of drugs for which trials take place outside of the U.S. The report found that ten drugs received U.S. approval in 2008 without testing being conducted in the U.S. and without any U.S. test patients. The report also found that four-fifths of the drugs approved for sale in 2008 had trials at foreign sites, and that over 75 percent of clinical trial participants were enrolled at foreign sites. The report also found that the FDA inspected a mere 0.7 per cent of clinical trial sites outside the country in 2008. The report recommends that the FDA require companies to submit their applications in an electronic format and that the agency keep a database tracking all clinical trials at foreign sites.

### House Committee Votes to Increase FDA Funding

A House Appropriations subcommittee has voted to increase the FDA's budget by $55 million over the President's request. The panel passed by unanimous consent the first proposed FDA spending bill for the 2011 fiscal year, funding the agency at $2.57 billion.

### Administration Releases Plan Requiring Reporting of Counterfeit Products

The Obama administration has released a plan requiring devicemakers to report counterfeit products and to submit lists of their products to the FDA twice a year so the agency can better track legitimately marketed devices.

## FDA Prepares Report for Congress on Drug Advertising

The FDA has given a report to Congress recommending various means by which drugmakers may more effectively communicate with underserved subsets of the population through advertising. The recommendations include that drug makers ensure that language is easily understood, that the effectiveness and risks of each drug for the target community are explained; and that information on discounts or patient assistance programs is provided. The agency explained that, although it cannot enforce its recommendations, it will consider them as it oversees drug promotion.

## Research Finds Avandia Increases Heart Risks

Two recent journal articles have found that Avandia increases heart risks in diabetes patients. The studies, published in the *Journal of the American Medical Association* and the *Archives of Internal Medicine* each found that taking the drug increased the risk of heart attack and of heart-related death. A panel is currently scheduled to meet on July 13 and 14 to determine whether to recommend to the FDA that the drug be removed from the market. GlaxoSmithKline, the maker of the drug, has stated that other recent studies have shown that the drug is safe.

## Supreme Court Rules "Machine or Transformation Test" Not Sole Test for Patentability

Industry is applauding the Supreme Court's ruling in *Bilski v. Kappos,* in which the Court rejected the notion that an innovation is only patentable if it is tied to a particular machine or transforms an article into a new state, saying that the ruling properly recognizes the ingenuity may take many forms. The Court remanded two other decisions, which some say could result in the lower courts' coming up with a new test to guide patent disputes for products that do not explicitly pass the machine-or-transformation test.

## Agency News

The FDA has published standardized restrictions to help minimize risks associated with long-acting painkillers. The restrictions will not require drugmakers to register doctors or patients.

FDA drug center chief Janet Woodcock has stated that the emphasis on Comparative Effective Research (CER) will shepherd in major change in the agency but that the establishment of the Patient-Centered Outcomes Research Institute will determine the future direction of the FDA's involvement in this realm. The Pharmaceutical Research and Manufacturers of America and the Biotechnology Industry Organization each nominated the following four candidates to the Patient-Centered Outcomes Research Institute: Freda Lewis-Hall, Joshua J. Ofman, Michael Rosenblatt, and Ellen Strahlman. BIO also nominated Charles Sanders and Jay Siegel.

Reports are indicating that the FDA is considering a requirement that FDA drug companies list expiration dates on all prescription drugs. Such information is already required for most products.

The FDA has launched a database to give drug manufacturers and stakeholders an avenue to match over 200 products with thousands of rare disease indications. The agency has indicated that it hopes the database will lead to the addition of more orphan drug indications on labeling.

Although the FDA has indicated that it supports the continued use of Merck's and GlaxoSmithKline's contaminated rotavirus vaccines, the Vaccines and Related Biological Products Advisory Committee has recommended that the long-term effects of the two rotavirus vaccines be evaluated.

An FDA panel has indicated that it is currently developing guidance aimed at reducing the amount of unnecessary information on drug labels, in an effort to reduce medication errors.

CDRH Director Jeffrey Shuren has indicated that the FDA is considering new ways to work with other entities in an effort to help ensure that needed technologies make it to market and are safe. Among the recommendations include tapping into CMS's coverage-with-evidence-development pathway or allowing companies "test drive" technologies within selected military or veterans hospitals prior to their full market release.

## Publications

The FDA has published a listing of premarket approval applications (PMAs) that have been approved. The list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs.

The FDA has published a draft guidance entitled "CMC Postapproval Manufacturing Changes Reportable in Annual Reports." Comments on the guidance should be submitted by September 23, 2010, to ensure that they are considered when the FDA drafts the final version of the guidance.

The FDA has published a guidance entitled "In Vitro Diagnostic (IVD) Device Studies--Frequently Asked Questions."

The FDA has published a draft guidance entitled "The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals." Comments on the guidance should be submitted by August 30, 2010, to ensure that they are considered prior to the drafting of the final guidance.

The Access to Medicines Index has been published, listing GlaxoSmithKline, Merck and Novartis as the top three companies making their medicines available for the world's poor.

PRTM Management Consultants has published the results of a survey finding that device companies are increasingly considering moving certain operations overseas. The survey found that 81% of device companies said current U.S. policy and the regulatory climate made it more attractive to do business in other countries. A majority of respondents also indicated that they would likely move their research and development operations overseas.

## Approvals

The FDA has approved Teva Pharmaceutical Industries Ltd.'s generic version of the cancer treatment Arimidex.

The FDA has approved a generic version of Effexor XR capsules to treat major depressive disorder.

The FDA has granted orphan-drug designation to Cyclacel Pharmaceuticals' drug sapacitabine.

## Recalls, Warnings, and Notifications

Pfizer Inc. has announced that it is voluntarily withdrawing its drug Mylotarg from the U.S. market.

Physio-Control Inc. has issued a Class I recall for its LIFEPAK 20 and LIFEPAK 20e External Defibrillator/Monitors.

Cepheid has issued a Class I Recall X of its Xpert MRSA/SA Blood Culture Assay for Use with the GeneXpert Dx System.

The FDA has indicated that it is launching a safety review of Daiichi Sankyo's Benicarafter patients in clinical trials had a higher rate of cardiovascular death compared with those on placebo.

The FDA has issued a warning letter to Wayne State University for failure to maintain adequate IRB meeting records and approval issues for proposed research.

## International News

The General Court of the European Union has fined AstraZeneca PLC $64.2 million for anticompetitive tactics intended to block the generic version of its drug Losec.

Members of the WTO have agreed to meet in October to discuss whether the availability of a waiver under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) allowing the export of generic pharmaceuticals manufactured under compulsory licenses to countries with insufficient or non-existent manufacturing capacity has been effective.

A UK Court has ruled that Medtronic Inc.'s CoreValve unit did not infringe a patent held by Edwards Lifesciences Corp.'s for its artificial heart-valve technology.

AusBiotech and the China Association for Medical Devices Industry have announced that they have signed a memorandum of understanding under which they will work together to develop a formal network to represent the medical technology industry on a regional basis.

## Business News

A US judge has upheld AstraZeneca PLC's patent for its cholesterol drug Crestor.

The *Wall Street Journal* has reported that the Supreme Court has rejected an appeal by Pfizer over two lawsuits alleging that the company violated international law by testing tested its experimental antibiotic Trovan on 200 children in Nigeria in the midst of an outbreak of bacterial meningitis.

Watson Pharmaceuticals has announced that it has begun selling a generic version of Novartis AG's drug Exelon.

The resurgence of dengue in the continental U.S. is causing some companies to focus their efforts on developing a vaccine for the disease.

A federal judge in New Orleans has found that Merck & Co. does not have to refund money the state of Louisiana paid for the withdrawn Vioxx painkiller, as the state failed to show that it would have sought to halt reimbursement for Vioxx if it had known additional information about the drug.

Celgene Corp. has announced that it will purchase Abraxis BioScience Inc. for $2.9 billion.

US Senator Charles Grassley has asked a number of drugmakers to answer several questions about how they treat whistleblowers who file complaints under the False Claims Act.

Reports are speculating that Sanofi Aventis is planning to make a $20bn US acquisition, with Allergan, Biogen Idec, and Genzyme as potential targets.

Some are concerned that the *Foreign Manufacturers Legal Accountability Act*, H.R. 4678, will discourage foreign devicemakers from marketing their products in the US. The bill requires companies to have a U.S. registered agent authorized to accept service of process or other legal documents. Although the bill is in response to faulty drywall imported from China, it will impose new regulations on a wide range of companies, including devicemakers.

Merck Serono has announced that it is resuming clinical trials of Stimuvax in patients with non-small cell lung cancer.

In a recent interview, Merck BioVentures President Michael Kamarck indicated that the company is preparing to file the first biosimilar candidate using the new abbreviated regulatory pathway for biosimilar drugs in the U.S.

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# *Regulatory Notices*

## FDA Seeks Comments on Recordkeeping Requirements for Medical Devices

The FDA is seeking comments from the public regarding recordkeeping requirements related to the medical devices current good manufacturing practice quality system regulation. Comments are due by August 23, 2010. More information is available at http://edocket.access.gpo.gov/2010/2010-15338.htm.

## FDA Issues Determination for Delalutin Injection

The FDA has determined that DELALUTIN injection, 125 milligrams (mg)/milliliter (mL) and 250 mg/mL, was not withdrawn from sale for reasons of safety or effectiveness.

### FDA Issues Notice of Termination of EUAs for Certain in vitro Diagnostic Devices

The FDA has issued a notice of the termination of the declarations of emergency justifying Emergency Use Authorizations (EUAs) of certain in vitro diagnostic devices, personal respiratory protection devices, and antiviral products that were issued in response to the public health emergency involving 2009 H1N1 Influenza.

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## *Public Meetings*

### General and Plastic Surgery Devices Panel to Meet

The FDA has announced that the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee will meet on August 26, 2010, from 8 a.m. to 6 p.m. in College Park, Maryland. More information is available at http://edocket.access.gpo.gov/2010/2010-15351.htm.

### Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee to Meet

The FDA has announced that the Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee will meet on August 20, 2010, from 8 a.m. to 5 p.m. in Bethesda, Maryland. More information is available at http://edocket.access.gpo.gov/2010/2010-15507.htm.

### Peripheral and Central Nervous System Drugs Advisory Committee to Meet

The FDA has announced that the Peripheral and Central Nervous System Drugs Advisory Committee will meet on August 11, 2010, from 8 a.m. to 5 p.m. in Silver Spring, Maryland. More information is available at http://edocket.access.gpo.gov/2010/2010-15504.htm.

### Orthopaedic and Rehabilitation Devices Panel to Meet

The FDA has announced that the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee will meet on July 27, 2010, from 8 a.m. to 6 p.m. in Gaithersburg, Maryland. More information is available at http://edocket.access.gpo.gov/2010/2010-15350.htm.

### Science Board to Meet

The FDA has announced that the Science Board will meet on Monday, August 16, 2010, from 8 a.m. to 3:30 p.m. in Bethesda, Maryland. More information is available at http://edocket.access.gpo.gov/2010/2010-15709.htm.

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## *More Information*

Archived issues of the Bryan Cave Pharmaceuticals, Medical Devices and Biologics Regulatory and Policy Bulletin and other FDA news bulletins are available at www.bryancave.com on the FDA Practice Bulletins web page.

If you have any questions regarding any of these issues, please contact:


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