
**Jones Day to Host Executive Roundtable Event and Health Care CLE on May 6**
On Tuesday May 6, Jones Day presents two offerings for our health care and life sciences community. The Washington office will be hosting an in-person Executive Roundtable to explore the legal implications at the intersections of health care and technology, while the Chicago office will host a morning CLE program focused on regulatory enforcement trends.

***Executive Roundtable Series: New Frontiers in Health Care and Life Sciences: A Look at the Legal Implications***
**1:00 – 4:00 p.m. (EDT) in Washington, DC**
*New Frontiers in Health Care and Life Sciences: A Look at the Legal Implications* will feature lunch and two panel discussions about the integration of technology in the development, delivery, and management of health care and related legal issues. CLE is available. For more information and to participate by webinar, click here, or to attend in person, click here.

***The Continuing Expansion of Health Care Enforcement by U.S. and International Authorities: Key Developments and Implications for the Future***
**9:30 a.m. – 12:15 p.m. (CDT) in Chicago, IL**
*The Continuing Expansion of Health Care Enforcement by U.S. and International Authorities: Key Developments and Implications for the Future* will feature two panes discussions covering important developments in health care enforcement, internationally and in the United States. Topics include False Claims Act litigation trends, Park Doctrine prosecutions, enforcement trends in China, and more. For more information and to participate by webinar, click here, or to attend in person, click here.

## Top Stories

**FDA Issues Much-Anticipated Health IT Report**
On April 3, FDA published the much-anticipated report proposing a regulatory framework for health information technology (also referred to as health IT and HIT), including mobile medical applications (apps). Mandated by the Food and Drug Safety and Innovation Act (FDASIA), the Proposed Risk-Based Regulatory Framework and Strategy for Health Information Technology, developed by FDA in collaboration with the Office of the National Coordinator for Health Information Technology (ONC), and the Federal Communications Commission (FCC), divides health IT into three categories with associated risk levels that warrant different levels of regulation. FDA plans to hold a public workshop to discuss the report May 13-15, 2014, and is accepting comments on the report through July 7, 2014.

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*Matthew R. Bowles, an associate in the Washington Office, assisted in the preparation of this* Update.

**Resources**

- *Pharmaceutical & Medical Device Regulatory Update* Issue 4 Printable Version
- Jones Day's Health Care Practice
- Jones Day's Life Sciences Practice

- read more below

**Sebelius Steps Down, Obama Nominates Burwell for HHS Top Post**
On April 11, 2014, Kathleen Sebelius resigned from her post as Secretary of Health and Human Services (HHS), a leadership position that oversees FDA and generally has ultimate authority over the agency's actions (although rarely does the Secretary of HHS opt to exercise such authority). President Obama swiftly nominated Sylvia Mathews Burwell, current director of the Office of Management & Budget, to take over the position and she awaits confirmation.

**Celltrion Files Second Biosimilar Patent Lawsuit**
On March 31, 2014, Celltrion Healthcare Co., Ltd. and Celltrion, Inc. became the second company developing a biosimilar to file a declaratory judgment action before filing a licensure application with FDA when it filed suit against Janssen Biotech, Inc. in the District of Massachusetts. The suit asks the court to declare three of Janssen's patents for arthritis therapy REMICADE® (infliximab) invalid and unenforceable. Celltrion alleges that its product "will become the first biosimilar of an antibody drug ever approved in the United States." Celltrion intends to apply for marketing approval this year and "expects to face infringement allegations from Janssen."
- read more below

**States Continue to Protest New Opioid Drug While FDA Stands Behind Approval, Takes Measures to Combat Opioid Abuse**
The level of attention garnered by Zohydro ER, the first FDA-approved single-entity (not combined with an analgesic) and extended-release hydrocodone product, and the efforts to overturn that approval, is perhaps unprecedented. As we previously reported, many state and federal officials have pushed FDA to revoke the drug's approval, and Governor Deval Patrick banned the drug outright in Massachusetts. Zogenix Inc., the maker of Zohydro responded by filing suit, and succeeded in getting a Federal Court to overturn the ban, on the basis that it is preempted by FDA's approval of the drug. Vermont and Rhode Island have also enacted measures related to Zohydro and opioid abuse generally.
- read more below

**FDA Commissioner Urges Greater Cooperation with Drug Industry in Developing Treatments**
During a speech to the Massachusetts Biotechnology Council earlier this month, FDA Commissioner Margaret Hamburg discussed the need for greater engagement with drug companies to develop new treatments for patients. According to the *Boston Globe*, Hamburg argued for "a new era of partnership" between FDA and the pharmaceutical industry. One that would involve regulatory flexibility so the Agency can coordinate with drug manufacturers during the development phase, before an application has been submitted. Last year, FDA started a "breakthrough therapy" designation to review programs in order to expedite the review of pharmaceuticals that target pressing medical needs, reducing the time for research, development, and regulatory approval by as much as five years. Hamburg indicated that FDA will continue to cultivate cooperative efforts with drug developers.

**Device Recall and Removal Reporting to Become More Efficient**
FDA is streamlining the reporting process for medical device removals and corrections, according to a recent article in *Regulatory Focus*. Known as "806 reports," these filings disclose 15 data points on issues related to manufacturing, marketing, and corrective action. Manufacturers must submit them within 10 days of the safety removal or correction. Traditionally, 806 reports were submitted by mail, but the new proposal creates a voluntary electronic submission process.

**France Plans to Allow Biosimilar Substitution**
The French government recently introduced a measure that would allow pharmacists to fill prescriptions for brand-name biotech drugs with lower cost biosimilars. According to Reuters, substitution would be allowed only at the outset of new treatment, and physicians would maintain discretion to require brand-name drugs. France is the first country in Europe to pursue biosimilar substitution, but other governments may copy the plan to reduce health care costs. Some economists estimate the biosimilars policy could save France between €500 million and €1 billion by 2020. Leaders from pharmaceutical companies like Amgen and Roche are meeting with French officials to discuss policy details before a final decree is issued.

**Other News**
Jones Day Reports On FTC Workshop Examining Health Care Competition

FDA Increases China Drug Inspections Amid Global Supply-Chain Concerns

Health IT Draws $700 Million In Investments in First Quarter of 2014

EU Looks for Industry Input on Mobile Health Guidance

FDA Establishes User Fee System for Pharmaceutical Compounders

Drug Companies Share Idle Clinical Trial Data for Cancer Research

Mass Biotech Council Says New Payment Restrictions Will Stifle Innovation

CDER Defends Generic Drug Labeling Proposal During Congressional Hearing

FDA Seeks to Expedite DESI Review Program

The Case for Closing the Diversity Gap in Clincial Trials

FDA Updates 30 Products with Drug Safety Labeling Changes in March.

## Regulatory Updates

**FDA Requests Comments on FDASIA HIT Report**
On April 7, FDA issued a request for comments on the recent Proposed *Risk-Based Regulatory Framework and Strategy for Health Information Technology Report*. The report proposes a strategy and offers recommendations for an appropriate, risk-based regulatory framework for health information technology (HIT), including medical device software and mobile medical applications. The framework aims to promote innovation, protect patient safety, and avoid regulatory duplication, and was a collaboration between the three federal agencies with potential oversight of HIT: FDA, the Office of the National Coordinator for Health Information Technology, and the Federal Communication Commission. ***Comments due July 7, 2014.***

**FDA Establishes Public Docket, Requests Comments to Address Opioid Abuse**
In the *April 9 Federal Register*, FDA announced a public docket to receive suggestions, recommendations, and comments on innovative packaging, storage, and disposal systems, technologies or designs that could be used to prevent or deter misuse and abuse of opioid analgesics by patients and others. The notice describes examples of innovative designs, including '"track and trace" capabilities, radio-frequency identification-based systems, and in-home medication deactivation or disposal systems. FDA seeks comments to help the Agency determine whether innovative designs for opioid analgesic packaging, storage, and/or disposal systems could help prevent or deter misuse and abuse without diminishing access for patients with legitimate prescriptions. ***Comments due June 9, 2014***.

**FDA Issues Guidance Including Same-Sex Couples in Definition of Spouse and Family**
In the *April 3 Federal Register*, FDA issued final guidance on *The Meaning of 'Spouse' and 'Family' in FDA's Regulations after the Supreme Court's Ruling in United States v. Windsor—Questions and Answers: Guidance for Industry, Consumers, and FDA Staff*. The guidance explains that these terms will include same-sex spouses in light of the recent Supreme Court decision. Six parts of FDA's regulations are affected, including those on human subject protection, financial disclosures for clinical investigators, and institutional review boards.

**FDA Extends Comment Periods for Blood Glucose Monitoring Systems Guidances**
In the *April 9 Federal Register*, FDA extended the comment period for two guidance documents related to blood glucose monitoring. The comment periods for *Blood Glucose Monitoring Test Systems for Prescription Point-of-Care Use* and Self-*Monitoring Blood Glucose Test Systems for Over-the-Counter Use* have both been extended. ***Comments due May 7, 2014.***

**FDA Reclassifies Stair-Climbing Wheelchairs**
In the April 14 Federal Register, FDA issued a final order to reclassify stair-climbing wheelchairs from Class III to Class II with special controls.

**FDA Issued the Following Additional Guidance Documents:**

• *Draft Guidance for Industry on Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act*. April 1 *Federal Register*. *Comments due June 2, 2014.*

• *Draft and Revised Product-Specific Bioequivalence Recommendations, based on 2010 Guidance for Industry on Bioequivalence Recommendations for Specific Products*. April 2 *Federal Register*, *Comments due June 2, 2014.*

• *Draft Guidance for Industry on Immunogenicity-Related Considerations for the Approval of Low Molecular Weight Heparin for New Drug Applications and Abbreviated New Drug Applications*. April 9 *Federal Register*. *Comments due June 9, 2014*.

• *Draft Guidance for Industry on Meetings With the Office of Orphan Products Development*. In the April 9 *Federal Register*. *Comments due June 9, 2014*.

• *Final Guidance for Industry on Types of Communication During the Review of Medical Device Submissions*. April 4 *Federal Register*.

**FDA Determines Regulatory Review Periods for Drug and Biologic Patents**

FDA recently published determinations of regulatory review periods for purposes of patent extension for the following products : PREVNAR–13; NULOJIX; FIRAZYR; EYLEA, NOVOTFF-100A SYSTEM; ONSIOR; and POTIGA.

**FDA Determines Certain Drugs Not Withdrawn for Safety or Effectiveness**

FDA published determinations that certain NIMOTOP (nimodipine), PREZISTA (darunavir), SKELAXIN (metaxalone), and ZOVIRAX (acyclovir sodium) products were not withdrawn for reasons of safety or effectiveness. FDA may still approve ANDAs referencing these drugs as long as the relevant legal and regulatory requirements are met.

**FDA announced that OMB has approved information collections for:**

• Testing Communications on Medical Devices and Radiation-Emitting Products.

• Application for Participation in the Medical Device Fellowship Program.

**FDA announced the opportunity to comment on the following proposed information collections:**

• Food and Drug Administration Generic Rapid Response Surveys (Generic Clearance) *(comments due May 9, 2014).*

• Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump-Premarket Notification Submissions *(comments due May 9, 2014).*

• Adverse Event Program for Medical Devices (Medical Product Safety Network) *(comments due May 14, 2014).*

• Guidance for Industry on Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices *(comments due June 6, 2014).*

• Current Good Manufacturing Practice Regulations for Medicated Feeds *(comments due June 6).*

• Current Good Manufacturing Practice Regulations for Type A Medicated Articles *(comments due June 6, 2014).*

• Adverse Experience Reporting for Licensed Biological Products; and General Records *(comments due June 6, 2014).*

• Index of Legally Marketed Unapproved New Animal Drugs for Minor Species *(comments due June 6, 2014).*

• Data To Support Drug Product Communications as Used by the Food and Drug Administration *(comments due June 6, 2014).*

• Exception From General Requirements for Informed Consent *(comments due June 9, 2014).*

## Upcoming Meetings, Workshops, and Conferences

**Drugs & Biologics**

Public Workshop on Standards for the Interoperable Exchange of Information for Tracing of Human, Finished, Prescription Drugs, in Paper or Electronic Format, with opportunity for comment. The Meeting will be held **May 8-9, 2014** in Silver Spring. ***Comments are due June 9, 2014***.

Public Meeting on Advancing the Development of Pediatric Therapeutics (ADEPT): Pediatric Bone Health will be held **June 3, 2014** in Silver Spring, MD.

Public Meeting on Immune Responses to Enzymes Replacement Therapies: Role of Immune Tolerance Induction will be held **June 9, 2014** in Silver Spring, MD.

Public Meeting on Public Meeting on Inborn Errors of Metabolism Patient-Focused Drug Development will be held **June 10, 2014** in Silver Spring, MD.

**Medical Devices**

Public Workshop on Proposed Risk-Based Regulatory Framework and Strategy for Health Information Technology will be held **May 13-15, 2014** in Gaithersburg, MD.

**Advisory Committees**
• April 24: Neurological Devices Panel of the Medical Devices Advisory Committee Meeting.
• May 2: Nonprescription Drugs Advisory Committee Meeting .
• May 13: Ophthalmic Devices Panel of the Medical Devices Advisory Committee Meeting .

For more comprehensive listings of FDA meetings, please visit these FDA web pages:
• Workshops & Conferences (Medical Devices)
• Meetings, Conferences, & Workshops (Drugs)
• Workshops, Meetings & Conferences (Biologics)
• FDA Advisory Committee Calendar

## Enforcement Updates

**Recent Product Recalls**

Recent drug recalls have included certain OTC weight loss products due to product tampering concerns.

There have been no new medical device or biologic recalls since the last Jones Day Pharmaceutical & Medical Device Regulatory Update.

Click here for a complete listing of FDA Recalls.

**Recent Warning Letters**

FDA recently posted warning letters to two foreign manufacturing facilities for failure to comply with CGMP requirements for active pharmaceutical ingredients (APIs). One facility was located in Ireland and the other in India. FDA additionally placed another Indian pharmaceutical firm on Import Alert for CGMP violations, meaning that its products will automatically be detained at the U.S. border until FDA is assured that CGMP issues have been resolved.

FDA also warned a compounding pharmacy that its products were adulterated due to being produced in an environment that poses a significant contamination risk. This is one way FDA can take enforcement action against firms who are exempt from CGMP requirements that normally apply to drug

manufacturers. We have seen an uptick in this kind of enforcement since meningitis outbreak was traced to a similarly exempt New England compounding pharmacy in 2012. The agency also recently referred six compounding pharmacies to state regulatory authorities after inspections revealed sterility issues.

In the area of medical devices, FDA recently warned two manufacturers, one for failing to comply with the Quality Systems Regulation, and a second for failing to comply with the Medical Device Reporting regulation.

Click here for FDA's Warning Letters Home page (scroll down for listing of recently posted Warning Letters).

According to its web site, the Office of Prescription Drug Promotion (OPDP) has issued no warning letters in the last 45 days.

Click here for a complete listing of 2014 OPDP Warning Letters.

**Recent Drug and Device Approvals**
FDA approves expanded indication for certain pacemakers and defibrillators (April 10).
FDA allows marketing for first-of-kind dressing to control bleeding from certain battlefield wounds (April 3).
FDA approves new hand-held auto-injector to reverse opioid overdose (April 3).
FDA approves first sublingual allergen extract for the treatment of certain grass pollen allergies (April 2).

For additional information on drug and device approvals and clearances, please visit FDA's web pages on Drug Approvals and Databases (includes biologics) and Device Approvals, Denials and Clearances.


## Top Stories

**Celltrion Files Second Biosimilar Patent Lawsuit**
On March 31, 2014, Celltrion Healthcare Co., Ltd. and Celltrion, Inc. became the second company developing a biosimilar to file a declaratory judgment action before filing a licensure application with FDA when it filed suit against Janssen Biotech, Inc. in the District of Massachusetts. The suit asks the court to declare three of Janssen's patents for arthritis therapy REMICADE® (infliximab) invalid and unenforceable. Celltrion alleges that its product "will become the first biosimilar of an antibody drug ever approved in the United States." Celltrion intends to apply for marketing approval this year and "expects to face infringement allegations from Janssen."

A similar suit was filed on June 24, 2013 by Sandoz, Inc. against Amgen, Inc. and Hoffman-La Roche, Inc. in the Northern District of California seeking a declaratory judgment of invalidity and noninfringement of two patents directed to Amgen's psoriasis and arthritis therapy ENBREL® (etanercept), also before filing a licensure application with the FDA. In that case, the district court granted a motion to dismiss on the basis that "neither a reference product sponsor, such as Amgen, nor an applicant, such as Sandoz, may file a lawsuit unless and until they have engaged in a series of statutorily-mandated exchanges of information" under the Biologics Price Competition and Innovation Act (BPCIA).

Enacted as part of the Affordable Care Act in 2010, the BPCIA created an abbreviated regulatory pathway for biosimilars, including a complicated procedure for patent litigation which some commentators have referred to as the "patent dance." Thus far, these are the only two lawsuits involving biosimilars that have been filed. The Sandoz v. Amgen case is currently on appeal to the Federal Circuit.


## Top Stories

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FDA continues to stand behind the approval, noting that it is an important option to treat drug addiction. On a related note, FDA recently approved a hand-held injector intended for emergency treatment in cases of opioid overdose and announced updated safety measures for extended-release and long-acting opioids. Additionally, last week, Commissioner Margaret Hamburg issued a statement on prescription opioid abuse and FDA established a docket to receive suggestions and public comments on methods to deter abuse of combination opioid analgesic products, as a part of a multi-pronged approach to addressing painkiller abuse. See story in Regulatory Updates section, below, for additional details.


## Regulatory Updates

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The report identifies administrative HIT functions – such as billing and claims processing – as having limited or no risk and thus warranting no additional oversight. Health management HIT functions – such as data exchange, electronic access to clinical results, and some clinical decision support software (CDS) – are identified as low-risk and thus, FDA would not "focus" oversight on this category, even if the HIT met the statutory definition of a medical device. FDA's primary focus would be on the third, higher-risk category of medical device HIT functionality. As examples of this third category, the report offers computer-aided detection software, remote display or notification of real-time alarms from bedside monitors, and robotic surgical planning and control, claiming that these types of products have always been regulated by FDA.

Notwithstanding the three categories and examples provided for each, the report still lacks key information on how HIT manufacturers can determine whether their products will be regulated by FDA. In particular, the distinction between the health management HIT and medical device HIT functionalities is not clear. This lack of clarity is made most obvious by the report's own example of "some CDS" falling into the health management HIT category. Regulated industry is left to wonder what defines "some" and where will the rest of CDS be regulated. The first panel at the May public workshop is entitled Risk Based Framework: *Points of*

*Clarification/ Ambiguities in Report,* so perhaps FDA will offer more clarity at that time.