JONES DAY | **Pharmaceutical & Medical Device Regulatory Update**
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Top News

Court Rules Biosimilar Patent Procedures Optional, Allows Marketing of First Biosimilar
A federal court in California has ruled that under the Biologics Price Competition and Innovation Act ("BPCI Act") a biosimilar applicant is not required to provide its application to the reference product sponsor. Rather, the order states the applicant may comply if it wants to take advantage of the safe harbor from declaratory judgment actions for patent infringement provided in the BPCI Act. The court also ruled that there is no bar to market entry for the biosimilar at issue, Zarxio, which recently became the first biosimilar approved by FDA.

A separate but recently filed action between another reference product sponsor and biosimilar applicant raising similar issues is currently pending in federal court in Massachusetts.

HHS Launches Initiative Aimed at Reducing Opioid Abuse
On March 26, 2015, U.S. Department of Health & Human Services ("HHS") Secretary Sylvia M. Burwell announced a new initiative targeting prescription opioid-related overdose, death, and dependence. The initiative will provide training for health care professionals on specialized prescribing methods; promote the development and increased use of naloxone, an opioid antagonist that can reverse the effects of narcotic drugs such as heroin; and expand medication-assisted treatments for substance use disorders.

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UPCOMING EVENTS

April 22–23, 2015: **Cristiana Spontoni** will speak at the 1st Annual Women Leaders in Life Sciences Law Conference

In her press release, Secretary Burwell described opioid abuse as "a devastating epidemic facing our nation" that must be addressed through targeted action involving all stakeholders. The federal initiative follows similar action by some states, which have enacted new rules to help quell the rising tide of opioid overdoses. According to HHS, deaths related to heroin increased 39 percent between 2012 and 2013.

House Passes Bill on Timely DEA Scheduling of New Drugs
The U.S. House of Representatives has passed a bill introduced by Reps. Joe Pitts (R-Pa.), Gene Green (D-Texas), and Frank Pallone (D-N.J.), the Improving Regulatory Transparency for New Medical Therapies Act. The bill requires the Drug Enforcement Agency ("DEA") to schedule new drugs within 90 days after the later of the FDA's approval of the drug or the DEA's receipt of FDA's scheduling recommendation. The legislation also prescribes a timeline for DEA to register controlled substances for use in clinical trials.

Public Citizen Sues FDA Over Request to Label Medications Containing Gluten
On March 16, 2015, the consumer advocacy group Public Citizen filed a complaint in federal court seeking to compel FDA to issue a decision on a citizen petition requesting gluten labeling for certain drugs.

program on "Pharmaceutical and Medical Device Regulatory Developments, Issue Spotting: Updates on the Substantive Legal Developments Affecting Life Sciences Companies in 2015 and Beyond."

April 27, 2015: **Maureen Bennett** will serve as a panelist on the Boston Bar Association's *Health Law Education Committee—Legal and Ethical Implications of Medical Tourism*.

May 3–5, 2015: **Scott Edelstein** and **Alexis Gilroy** will speak at the American Telemedicine Association's Annual Meeting in a program titled "Telehealth Partnering in US & Abroad—A Look at Viable Strategies & Legal Considerations." Doug Pearson and Bruce Olcott will speak at a pre-conference session titled "Digital Health in Transition: Regulatory Insight for Product Developers."

RELATED PRACTICES

FDA Regulatory & Compliance Counseling

Health Care

Life Sciences

Submitted by a celiac patient in 2008, the petition seeks to mandate that prescription medications exclude the use of wheat gluten or, alternatively, be labeled as containing gluten. FDA received 138 comments on the petition before the comment period closed in March 2012, but the agency has taken no action on the petition to date. Public Citizen's complaint alleges FDA's refusal to act for nearly seven years constitutes an unreasonable delay under the Administrative Procedure Act.

ECJ Hands Down Judgment on Supplementary Protection Certificates
The European Court of Justice ("ECJ") recently held that under EU Regulation (EC) No 469/2009, where a patentee holds a supplementary protection certificate ("SPC") on an active ingredient, and the patent includes claims solely to that ingredient as well as to combinations with other ingredients, the patentee is precluded from obtaining a second SPC for that combination.

Most Clinical Trials Do Not Timely Report Results
According to an article recently published in the *New England Journal of Medicine*, less than 14 percent of clinical trials from 2008 to 2013 reported results within 12 months after study completion as required by the Food and Drug Administration Amendments Act. The authors also found that industry-funded trials were more likely to make timely reports of results than trials funded by government or academic institutions. The National Institutes of Health is presently considering adoption of a draft policy to expand clinical trial registration and reporting requirements.

Other News
FDA Extends Comment Period for Draft Guidance on Combination Product GMPs

Industry Report Finds Drug Spending Rose Last Year at Fastest Rate Since 2003

Public Comments Weigh Heavily Against FDA Allowing Drug Makers to Tell Doctors Drug Risks Lower Than in Label

FDA Report Identifies Seven Major Areas of Drug Safety-Related Needs

Wyoming Joins Five Other States in Passing Right-to-Try Law for Terminally Ill Patients

Deadline for New York's ePrescription Requirement Delayed

Regulatory Updates

FDA Authorizes Emergency Use of IV Diagnostic for Detecting Ebola Virus
In the March 17, *Federal Register*, FDA announced the issuance of an Emergency Use Authorization ("EUA") for an in vitro diagnostic device for detection of the Ebola Zaire virus. The EUA was issued pursuant to the Federal Food, Drug, and Cosmetic Act, in response to the 2014 Ebola virus outbreak in West Africa.

FDA Releases Report on Drug Safety-Related Regulatory Science
In the March 19, 2015, *Federal Register*, FDA announced the availability of a report titled "Assessing CDER's Drug Safety-Related Regulatory Science Needs and Identifying Priorities." The report reflects research conducted by the FDA's Center for Drug Evaluation and Research ("CDER") in an effort to further assess and prioritize the drug safety-related regulatory science needs that were presented in the July 2011 report, Identifying CDER's Science and Research Needs. FDA seeks comments from stakeholders conducting related research. ***Comments due May 18, 2015***.

FDA Terminates Antiviral Drugs Advisory Committee
In the March 20, 2015, *Federal Register*, FDA announced the termination of the Antiviral Drugs Advisory Committee from the Agency's list of standing advisory committees.

FDA Reclassifies Limited Output Transcutaneous Piezoelectric Stimulator
In the March 23, 2015, *Federal Register*, FDA ordered the reclassification of limited output transcutaneous piezoelectric stimulators for skin reactions associated with insect bites into Class II (special controls). FDA is requiring labeling and biocompatibility assessments for identified health risks, such as cutaneous burns, adverse skin reactions, and damage to sensitive tissue.

FDA Approves New Animal Drug Applications
In the March 13, 2015, *Federal Register*, FDA announced amendments to the animal drug regulations in order to reflect approval actions for new animal drug applications ("NADAs") and abbreviated new animal drug applications ("ANADAs"). The amendments will also reflect a change of sponsorship of eight NADAs and nine ANADAs, and to make correcting amendments for a drug labeler code.

FDA Releases a Correction to Abbreviated New Drug Applications and 505(b)(2)
In the March 13, 2015, *Federal Register*, FDA announced a series of corrections to the Proposed Rule Document 2015-01666 published in the February 6, 2015, *Federal Register*.

FDA Issued the Following Draft and Final Guidance Documents
Guidance for Industry: Electronic Submission of Lot Distribution Reports, March 23, 2015, *Federal Register*.

Guidance for Industry and FDA Staff: Reprocessing Medical Devices in Health Care Settings: Validation Methods and Labeling, March 17, 2015, *Federal Register*.

Draft Guidance for Industry and FDA Staff: Current Good Manufacturing Practice Requirements for Combination Products, March 13, 2015, *Federal Register*. ***Comment period extended; comments now due April 29, 2015***.

FDA Announced the Opportunity to Comment on the Following Proposed Information Collections

- Emergency Shortages Data Collection System
- Medical Device Recall Authority
- State Enforcement Notifications
- Postmarketing Adverse Drug Experience Reporting and Recordkeeping Biological
- Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution

EU Regulatory Notices

EMA Issues Note on Pharmacovigilance Fees

The European Medicines Agency ("EMA") has published an explanatory note on the fees payable to the EMA for its monitoring of the safety of medicines authorized in the EU. In August 2014, on the basis of EU pharmacovigilance legislation, the EMA started charging fees for pharmacovigilance procedures to companies whose medicines, whether centrally or nationally authorized, are included in these procedures. Such procedures include the assessment of periodic safety update reports, the assessment of post-authorization-safety-study (PASS) protocols and study results, and pharmacovigilance-related referrals.

First Drug Fast-Tracked to NHS Patients Under New UK Early Access Scheme

On March 11, 2015, the UK Medicines and Healthcare Products Regulatory Agency announced that following an evaluation of quality, safety, and efficacy data, a positive opinion has been awarded for pembrolizumab for the treatment of advanced melanoma. Pembrolizumab is the first drug to be approved through the Early Access to Medicine Scheme, which was launched on April 7, 2014. This move has been welcomed by the European Federation of Pharmaceutical Industries and Associations.

UK's Office for Life Sciences Announces Plans to Give NHS Patients Quicker Access to Innovative Medicines and Medical Technology

On March 11, 2015, the UK government announced the launch of a review, the "Innovative Medicines and Medical Technology Review," which is aimed at improving the speed at which medical innovations such as precision medicines, digital devices, apps, diagnostics, and new therapeutic technologies get to patients and their families.

Upcoming Meetings, Workshops, and Conferences

Drugs and Biologics

Public Meeting on Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products, **March 27, 2015**, in Silver Spring, MD.

Public Workshop on Clinical Outcomes Assessment Development and Implementation: Opportunities and Challenges, **April 1, 2015**, in Silver Spring, MD.

Public Meeting on Breast Cancer Patient-Focused Drug Development, **April 2, 2015**, in Silver Spring, MD.

Public Meeting on Identification of Alternative In Vitro Bioequivalence Pathways that Can Reliably Ensure In Vivo Bioequivalence of Product Performance and Quality of Non-Systemically Absorbed Drug Products for Animals, **April 16, 2015**, in Rockville, MD.

Public Workshop on Advancing the Development of Pediatric Therapeutics, **April 16–17, 2015**, in Silver Spring, MD.

2015 Office of Regulatory Science and Innovation Science Symposium, **April 17, 2015**, in Silver Spring, MD.

Public Meeting on Chagas Disease Patient-Focused Drug Development, **April 28, 2015**, in Silver Spring, MD.

Public Workshop: Gastroenterology Regulatory Endpoints and the Advancement of

Therapeutics (GREAT III), **March 30–31, 2015**, in Silver Spring, MD.

Public Meeting on Functional GI Disorders Patient-Focused Drug Development, **May 11, 2015**, in Silver Spring, MD.

Public Workshop on Electronic Cigarettes and Public Health, **June 1–2, 2015**, in Hyattsville, MD.

FDA/AFDO Conference titled *In Motion: Science Transforming Policy in Food, Drug, and Medical Device Regulation*, **June 20–24, 2015**, in Indianapolis, IN.

FDA/PDA Conference titled *Mission Possible: Patient-Focused Manufacturing, Quality, and Regulatory Solutions*, **September 28–30, 2015**, in Washington, D.C.

Medical Devices
FDA Public Workshop on Clinical Considerations of Risk in the Postmarket Environment, **April 21, 2015**, in Silver Spring, MD.

FDA/Xavier University Global Medical Device Conference (MedCon), **May 6–8, 2015**, in Cincinnati, OH.

Public Hearing on Generic Drug User Fee Amendments of 2012—Regulatory Science Initiatives, **June 5, 2015**, in Silver Spring, MD.

FDA/AFDO Conference titled *In Motion: Science Transforming Policy in Food, Drug, and Medical Device Regulation*, **June 20–24, 2015**, in Indianapolis, IN.

FDA Public Workshop titled *Robotically-Assisted Surgical (RAS) Devices: Challenges and Opportunities*, **July 27–28, 2015**, in Silver Spring, MD.

Advisory Committees
April 14, 2015: Endocrinologic and Metabolic Drugs Advisory Committee (to discuss the results of the cardiovascular outcomes trial for certain new drug applications for anti-diabetic therapies)

April 15, 2015: Cardiovascular and Renal Drugs Advisory Committee (to discuss a new drug application for the proposed indication of reduction of thrombotic cardiovascular events in patients with coronary artery disease undergoing percutaneous coronary intervention ("PCI") who have not received an oral P2Y12 inhibitor prior to the PCI procedure and in whom oral therapy with P2Y12 inhibitors is not feasible or desirable)

April 17, 2015: Neurological Devices Panel of the Medical Devices Advisory Committee (to discuss the current knowledge regarding the conduct of clinical studies and evaluation of clinical study data for flow diverter technology)

April 29, 2015: Joint Meeting of the Cellular, Tissue and Gene Therapies Advisory Committee and the Oncologic Drug Advisory Committee (to discuss a biologics license application for an oncolytic immunotherapy for the treatment of patients with injectable regionally or distantly metastatic melanoma)

April 30, 2015: Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee (to discuss and make recommendations regarding the classification of Hearing Protectors, Circumaural Hearing Protectors, Middle Ear Inflation Devices, Tactile Hearing Aid Devices, and Vestibular Analysis Apparatuses)

May 12, 2105: Vaccines and Related Biological Products Advisory Committee (to discuss the development and licensure of Ebola vaccines)

May 14–15, 2015: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee (to discuss recent reports and epidemiologic investigations of transmission of infections associated with the use of duodenoscopes in endoscopic

retrograde cholangiopancreatography procedures in hospitals in the United States)

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

Recent Notable Drug and Device Approvals/Clearances

FDA approves blood pump system to help patients maintain stable heart function during certain high-risk cardiac procedures (March 23, 2015)

FDA approves Cholbam to treat rare bile acid synthesis disorders (March 17, 2015)

FDA approves first therapy for high-risk neuroblastoma (March 10, 2015)

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.

Enforcement Updates

Recent Product Recalls
Since we last reported on enforcement actions in February 2015, FDA posted recalls of an injection drug product that was found to be contaminated with human hair and another irrigation solution contaminated with nontoxic mold. A weight loss drug was recalled for undeclared sibutramine, a substance that was withdrawn from the U.S. market years ago due to increased risks of heart attack and stroke. In addition, a drug manufacturer recalled a magnesium sulfate solution due to concerns that its packaging had been mislabeled with a barcode for heparin solution. There were no recent recalls of medical devices posted on FDA's website.

View a complete listing of FDA Recalls.

Recent Warning Letters
FDA recently posted warning letters to drug and medical device manufacturers for violations related to CGMP ("Current Good Manufacturing Practices"), QSR ("Quality Systems Regulations"), and MDR ("Medical Device Reporting").

Pharmaceutical companies received warning letters for CGMP violations and misbranded drugs. Specifically, FDA cited a Thailand manufacturer of active pharmaceutical ingredients ("APIs") for failing to reprocess raw materials in accordance with drug master file specifications and for not having adequate controls in place to prevent unauthorized access to laboratory data. Another drug company was warned because its weight-loss products contained undeclared APIs.

Manufacturers of endoscopy devices, dental x-ray units, oxygen conservers, and therapeutic beds received warning letters for QSR violations. The letters reference failures to establish quality systems and conduct audits, to maintain design validations and device master records, and to implement corrective and preventative actions. Two of the letters repeated warnings that were previously documented as FDA 483 Inspectional Observations. In addition, two device manufacturers were cited for failing to maintain complaint files and follow MDR procedures. FDA also warned a manufacturer for selling diagnostic test kits without premarket clearance and cited a medical supply company for distributing combination drug-device syringes that have not been approved.

View FDA's Warning Letters homepage (scroll down for listing of recently posted Warning Letters).

The Office of Prescription Drug Promotion ("OPDP") recently issued two untitled letters to organizations in response to promotional materials they posted online. OPDP warned a pharmaceutical company for making unsubstantiated claims about the supposed superiority of its synthetic surfactants to other FDA-approved products. In a separate action, the sponsor of an investigational new drug ("IND") was cited for promoting the IND as safe and effective for purposes for which it was still being tested.

View a complete listing of 2015 OPDP Warning Letters.

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