JONES DAY | **Pharmaceutical & Medical Device Regulatory Update**
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Jones Day Announcements

In a recent *Emerging Issues* video, Jones Day partner Steve Sozio discusses the case of *Amarin Pharma, Inc. v. FDA* regarding off-label drug use and potential implications on the pharmaceutical industry.

Top News

President Obama Nominates Robert Califf as FDA Commissioner
On September 15, 2015, President Barack Obama announced the nomination of Robert Califf to be the next commissioner of the U.S. Food and Drug Administration ("FDA"), succeeding Stephen Ostroff, who has served in an interim role since Margaret A. Hamburg resigned in March 2015. Califf, a leading cardiologist and former vice chancellor of clinical and translational research at Duke University, joined FDA in January 2015 as a deputy commissioner for medical products and tobacco. His appointment as commissioner is subject to confirmation by the Senate.

HRSA Publishes Notice of Proposed Guidance for 340B Drug Pricing Program
On August 28, 2015, the Health Resources and Services Administration ("HRSA") published a notice of proposed guidance in the *Federal Register* related to the 340B Drug Pricing Program ("340B Program"). The proposed guidance is intended to assist 340B covered entities and drug manufacturers by clarifying key definitions integral to the operation of the 340B Program. For instance, HRSA proposes an

CONTACTS

Edgar Asebey
Miami

Maureen Bennett
Boston / San Francisco

Cristiana Spontoni
Brussels

Colleen M. Heisey
Washington

Christian B. Fulda
Munich

Chiang Ling Li
China

Emily K. Strunk
Washington

Katherine M. Llewellyn
Brussels

Stephanie L. Resnik
Washington

Matthew R. Bowles
Washington

Mitsutaka Okano
Tokyo

Claire E. Castles, Michele R. Goodman, and Katherine S. Makielski assisted in the preparation of this Update.

Detailed Contact Information

UPCOMING EVENTS

October 1–2, 2015: Colleen Heisey will moderate a session titled *Challenging Hypotheticals*, at the Food & Drug Law

expanded test for an "eligible patient" that breaks from past guidance and provides additional compliance elements for covered entities. The proposed guidance also addresses hospital eligibility criteria and eligibility of off-campus facilities and addresses contract pharmacy arrangements by identifying compliance requirements. Given the core issues covered by the proposed guidance, it is expected that many industry participants will provide substantive comment. ***HRSA is accepting comments on the proposed guidance through October 27, 2015***.

- Read More

HHS Proposes Revisions to the Common Rule for the Protection of Human Subjects

On September 8, 2015, HHS and other federal agencies and departments published a notice of proposed rulemaking revising the *Federal Policy for the Protection of Human Subjects* (known as the "Common Rule"). Some notable proposed changes include (i) expanding the scope of research regulated by the Common Rule; (ii) redefining the term "human subject" to include most research involving biospecimens regardless of whether they can be identified; (iii) excluding certain categories from the definition of "research" and adding new categories of exempt research; (iv) revising informed consent requirements, including provisions aimed at making consent documents shorter and easier to understand; (v) streamlining Institutional Review Board ("IRB") review of research; and (vi) adding provisions to protect privacy and data security.

FDA's human subject protection regulations, codified in title 21 of the Code of Federal Regulations, are distinct in both scope and substance from the Common Rule. Nevertheless, HHS's notice highlighted the efforts of FDA and HHS's Office for Human Research Protections ("OHRP") to "harmonize the agencies' regulatory requirements and guidance for human subject research." The notice also expressed an intent to "consider the need for updates to FDA regulations" as appropriate in light of proposed revisions to the Common Rule. For additional information, see the Jones Day *Commentary* on the proposed guidance.

China Makes Efforts to Reduce Backlog of Drug Approvals

The Chinese Food and Drug Administration ("CFDA") recently published a draft circular to address the more than 21,000 drug applications that have been submitted for agency review (CFDA Circular [2015] No. 140, the "No. 140 Circular"). The No. 140 Circular proposes 10 policies to reduce the backlog of drug applications and expedite the approval process for certain types of drugs. The policy also proposes changing the approval system for bioequivalence studies. The No. 140 Circular comes in response to criticism from China's State Council, which instructed the CFDA's Center for Drug Evaluation that the current backlog must not grow larger in the next year and the entire backlog must be addressed by 2018. In parallel, the CFDA has also posted a notice seeking to recruit an additional 69 people to review drug approval submissions, which would increase the division's staff by approximately 50 percent.

EU Court Suspends EMA Decision to Grant Access to Drug Data

On September 1, 2015, the European General Court granted an interim order in favor of

Institute ("FDLI")'s program on Advertising and Promotion for the Pharmaceutical, Medical Device, Biological, and Veterinary Medicine Industries, in Washington, D.C.

October 15–16, 2015: Colleen Heisey will moderate a panel discussion at the Medical Device Law 2015 Conference, cosponsored by the American Bar Association ("ABA"), Medical Device Manufacturers Association, and FDLI, in Washington, D.C.

October 24, 2015: Maureen Bennett will speak about *International Clinical Research Issues* at the ABA's Section of International Law fall meeting in Montreal.

December 2, 2015: Maureen Bennett will give a presentation on *International Clinical Research Issues* to the Boston Bar Association's Health Law Education Committee.

RELATED PRACTICES

FDA Regulatory & Compliance Counseling

Health Care

Life Sciences

Pari Pharma, temporarily suspending the operation of a decision by the European Medicines Agency ("EMA") to allow Novartis Europharm to gain access to reports on Pari Pharma's drug Vantobra under the agency's new transparency regulation. Such reports were prepared for and supported Vantobra's marketing authorizing application.

- Read More

ASCO Updates Policy on Genetic Testing

The American Society of Clinical Oncology ("ASCO") recently updated its policy statement on genetic and genomic testing for cancer susceptibility, addressing the opportunities and challenges presented by next-generation sequencing to cancer susceptibility testing. ASCO's position embraces the growth and enhancements offered by precision medicine but cautions that the application of novel technology in oncology presents complexities for risk assessment and management practices. The policy statement provides recommendations regarding: germline implications of somatic mutation profiling; multigene panel testing for cancer susceptibility; quality assurance in genetic testing; education of oncology professionals; and access to cancer genetic services. ASCO previously updated its policy in 2010. In addition to releasing the revised policy, ASCO published an editorial in the *Journal of Clinical Oncology* further characterizing its position.

Other News

First U.S. Biosimilar Drug Launches, Following Favorable Court Decision

HHS Proposes Rule Change for Opioid-Treatment Drug Buprenorphine

FDA Releases Mid-Pilot Status Report for Medical Device Single Audit Program

HHS Hosts 50-State Convention on Preventing Opioid Abuse and Overdose

Pain Med Manufacturer Sues FDA on Basis of *Amarin* Ruling

FDA to Review "Digital Pill" with Sensor for Monitoring Compliance and Physiologic Response

EPA Proposes Rule on Pharmaceutical Disposal

Regulatory Updates

FDA Publishes User Fee Rates for Using a Tropical Disease Priority Review Voucher in FY2016

In the September 14, 2015, *Federal Register*, FDA announced the fee rates for fiscal year 2016 associated with using a tropical disease priority review voucher ($2.7m). The fee is determined each fiscal year based on an analysis of the prior year's data regarding the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review and the average cost incurred in the review of an application not subject to priority review.

FDA Reopens Comment Period on Homeopathic Product Regulation: Evaluating the Food and Drug Administration's Regulatory Framework After a Quarter-Century

In the September 9, 2015, *Federal Register*, FDA announced it is reopening the comment period on "Homeopathic Product Regulation: Evaluating the Food and Drug Administration's Regulatory Framework After a Quarter-Century" to allow interested persons additional time to submit comments. ***Comments are now due November 9, 2015.***

FDA Announces Renewal of Nonprescription Drugs Advisory Committee

In the September 3, 2015, *Federal Register*, FDA announced the renewal of the Nonprescription Drugs Advisory Committee by the FDA Commissioner. The committee is being renewed for an additional two years beyond the charter expiration date.

FDA Amends Animal Drug Regulations
In the September 4, 2015, *Federal Register*, FDA announced it is amending the animal drug regulations to reflect application-related actions for new animal drug applications and abbreviated new animal drug applications during May and June 2015. Changes are being made to regulations relating to oral dosage forms for new animal drugs, ophthalmic and topical dosage forms in new animal drugs, and new animal drugs for use in animal feeds.

FDA Determines that Glucagon (Glucagon Hydrochloride) Was Not Withdrawn for Reasons of Safety or Effectiveness
In the September 9, 2015, *Federal Register*, FDA published its determination that Glucagon (glucagon hydrochloride) for injection, equivalent to (EQ) 1 milligram (mg) base/vial and EQ 10 mg base/vial, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications for glucagon hydrochloride for injection, EQ 1 mg base/vial and EQ 10 mg base/vial, if all other legal and regulatory requirements are met.

FDA Issues Emergency Use Authorization for In Vitro Diagnostic Device for Detection of Ebola Zaire Virus
In the September 14, 2015, *Federal Register*, FDA announced the issuance of an Emergency Use Authorization ("EUA") for an in vitro diagnostic device for the detection of the Ebola Zaire virus in response to the recent outbreak. FDA issued this EUA pursuant to the Federal Food, Drug, and Cosmetic Act ("FDCA") at the request of the applicant. ***Effective July 31, 2015.***

FDA Issues Emergency Use Authorization for MERS-CoV Detection Device
In the September 1, 2015, *Federal Register*, FDA announced the issuance of an EUA for an in vitro diagnostic device for detection of Middle East Respiratory Syndrome Coronavirus (MERS-CoV). FDA issued this authorization under the FDCA, as requested by altona Diagnostics GmbH.

FDA Issued the Following Draft and Final Guidance Documents
Guidance for Industry: Q3D Elemental Impurities, September 10, 2015, *Federal Register.*

Guidance for Industry: Nonclinical Evaluation of Endocrine-Related Drug Toxicity, September 9, 2015, *Federal Register.*

Guidance for Industry: Use of Donor Screening Tests to Test Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products for Infection with Treponema pallidum (Syphillis), September 9, 2015, *Federal Register.*

Guidance for Industry: Two-Phased Chemistry, Manufacturing, and Controls Technical Sections, September 1, 2015, *Federal Register.*

Guidance for Industry: Electronic Exchange of Documents: Electronic File Format, September 1, 2015, *Federal Register.*

Draft Guidance for Industry and Review Staff: Formal Dispute Resolution: Appeals Above the Division Level, September 9, 2015, *Federal Register.* ***Comments are due December 8, 2015.***

Draft Guidance for Industry: Distributor Labeling for New Animal Drugs, September 10, 2015, *Federal Register.* ***Comments are due November 9, 2015.***

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

- Environmental Impact Considerations

- Guidance for Industry on Safety Labeling Changes—Implementation of Section 505(o)(4) of the FDCA

FDA Announced that the Following Collections Have Been Submitted to OMB:

- Establishment and Operation of Clinical Trial Data Monitoring Committees

FDA Announced that the Following Collections Have Been Approved by OMB:

- New Animal Drugs for Investigational Use

EU Regulatory Notices

EMA Organizes Orphan Medicines Workshop

The EMA has announced it is organizing a workshop on December 7, 2015, to discuss the approach that should be followed by medicine developers to demonstrate the significant benefit of orphan medicines over existing treatments. In the EU, medicines that treat rare diseases are known as "orphan medicines," and developers of such products can benefit from a number of incentives. Demonstrating a significant benefit is one of the criteria that orphan medicines must fulfill to benefit from 10 years of market exclusivity once they have been authorized. The workshop, which will be broadcast live, will bring together medicine developers, regulators, health care professionals, academia, patients, health-technology-assessment bodies, and health care payers. ***Registration to attend is open until October 31, 2015.***

EU Commission Report on the Operation of the Cross-Border Health Care Directive

On September 3, 2015, the European Commission published its report on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border health care ("CBHC Directive"). The "state of play" report of the CBHC Directive highlights legislative advances at the EU level in the past two years coupled with genuine efforts at national level. The document reports that the CBHC Directive has improved transparency and patient mobility throughout the EU and enabled progress on Health Technology Assessment, e-Health cooperation, and European Reference Networks. However, the report also shows that European citizens' awareness about their right to choose health care in another EU country remains low.

Call for Expression of Interest Opens for EMA Management Board

The European Commission is launching a selection procedure to appoint the Civil Society representatives in the Management Board of the EMA in London. Four members from Civil Society will be appointed: two members representing patients' organizations, one member representing doctors' organizations, and one member representing veterinarians' organizations. Members are appointed for a renewable period of three years. The Commission will draw up a list of candidates to send to the Council, which will then appoint the new members in consultation with the European Parliament. ***Submission of applications is due September 20, 2015***.

Upcoming Meetings, Workshops, and Conferences

Drugs and Biologics

Public Workshop titled "Surrogate Endpoints for Clinical Trials in Kidney Transplantation," **September 28, 2015**, in Arlington, VA.

FDA/CDC/NLM Workshop on Promoting Semantic Interoperability of Laboratory Data, **September 28, 2015**, in Silver Spring, MD.

Sixth Annual Coalition Against Major Diseases/Food and Drug Administration Scientific Workshop, **October 15, 2015**, in Silver Spring, MD.

Public Meeting on Patient-Focused Drug Development for Nontuberculous Mycobacterial Lung Infections, **October 15, 2015**, in Silver Spring, MD. ***Comments are due***

December 15, 2015.

Public Workshop titled "In Vitro Diagnostic Testing for Direct Oral Anticoagulants," **October 26, 2015**, in Silver Spring, MD.

Public Workshop titled "Osteoporosis Drug Development: Moving Forward," **November 4, 2015**, in Silver Spring, MD. ***Comments are due October 7, 2015.***

Public Meeting on Drug Interactions with Hormonal Contraceptives: Public Health and Drug Development Implications, **November 9, 2015**, in Silver Spring, MD.

Public Workshop titled "Standards-Based Approach to Analytical Performance Evaluation of Next Generation Sequencing In Vitro Diagnostic Tests, **November 12, 2015**, in Silver Spring, MD.

Public Workshop titled "Use of Databases for Establishing the Clinical Relevance of Human Genetic Variants, **November 13, 2015**, in Silver Spring, MD. ***Comments are due November 25, 2015.***

Medical Devices
Public Workshop on Medical Device Patient Labeling, **September 29–30, 2015**, in Silver Spring, MD.

Public Workshop on Acute Ischemic Stroke Medical Devices Trials, **October 6, 2015**, in Silver Spring, MD.

Public Workshop titled "Non-Microbial Biomarkers of Infection for In Vitro Diagnostic Device Use," **October 16, 2015**, in Silver Spring, MD.

Advisory Committees
Arthritis Advisory Committee, **October 23, 2015**, in Silver Spring, MD.

Bone, Reproductive, and Urologic Drugs Advisory Committee, **November 3, 2015**, in Silver Spring, MD.

Anesthetic and Analgesic Drug Products Advisory Committee, **November 6, 2015**, in Silver Spring, MD.

Psychopharmacologic Drugs Advisory Committee, **September 9, 2015**, in Silver Spring, MD.

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 new orphan drug to treat rare autosomal recessive disorder (September 4, 2015)

FDA approves new drug treatment for nausea and vomiting from chemotherapy (September 2, 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.

Jones Day FDA Regulatory & Compliance Counseling Contacts

Edgar Asebey
Miami
+1.305.714.9707
easebey@jonesday.com

Maureen Bennett
Boston/San Francisco
+1.617.449.6884/
+1.415.875.5772
mbennett@jonesday.com

Cristiana Spontoni
Brussels
+32.2.645.14.48
cspontoni@jonesday.com

Colleen M. Heisey
Washington
+1.202.879.3449
cmheisey@jonesday.com

Christian B. Fulda
Munich
+49.89.20.60.42.200
cfulda@jonesday.com

Chiang Ling Li
China
+852.3189.7338
chianglingli@jonesday.com

Emily K. Strunk
Washington
+1.202.879.3778
estrunk@jonesday.com

Katherine M. Llewellyn
Brussels
+32.2.645.14.47
kllewellyn@jonesday.com

Mitsutaka Okano
Tokyo
+81.3.6744.1606
mokano@jonesday.com

Stephanie L. Resnik
Washington
+1.202.879.5458
sresnik@jonesday.com

Matthew R. Bowles
Washington
+1.202.879.3604
mbowles@jonesday.com

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As additional considerations for drug manufacturers participating in the 340B Program, the proposed guidance clarifies the limiting definition of "covered outpatient drugs" that must be offered to covered entities at or below the respective drug's ceiling price. The proposed guidance also outlines participating drug manufacturer responsibilities, including obligations related to: (i) entering a pharmaceutical pricing agreement with Health and Human Services ("HHS"); (ii) annual and other timely program database updates, (iii) recordkeeping and compliance audits by HHS; (iv) providing covered outpatient drugs to covered entities, including effective dates for 340B Program pricing, a prohibition against conditioning sales on covered entities' compliance with the 340B Program, allowance for limited distribution plans if certain criteria are met, and permitting of additional, non-uniform discounts to covered entities; and (v) providing refunds and credits for overcharges. Finally, the proposed guidance provides a process, requirements, and limitations for manufacturer audits of a covered entity, its child sites, and its contract pharmacies.

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EU Court Suspends EMA Decision to Grant Access to Drug Data

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Novartis was originally granted "orphan" designation for its cystic fibrosis treatment TOBI Podhaler. However, Pari was able to obtain market clearance for its rival product, in part by proving its treatment was clinically superior due to greater safety in a substantial portion of the target population. Novartis subsequently made a request under Regulation 1049/2001 ("Transparency Regulation") for access to the Similarity Report and Superiority Report between the two products. The EMA issued a decision granting Novartis access to the requested reports on the basis that such documents did not contain "commercial confidential information."

Pari appealed the EMA decision on the basis that it violates the Transparency Regulation and thus violates the applicant's fundamental rights and freedoms with respect to private life and confidentiality under article 7 of the Charter of Fundamental Rights of the European Union ("Charter") and article 8 of the Convention for the Protection of Human Rights, among other things. Pari argues that disclosure would allow any competitor to simply use the data for the purpose of obtaining marketing authorization for its own tobramycin product without any additional investment, thereby undermining Pari's commercial interest, and that there is no overriding public interest in disclosure of the documents. The court's order temporarily suspends the EMA's decision, while the main case is pending. This case is the latest in a series of cases brought by pharmaceutical companies challenging the EMA's policy on access to documents.

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