Generic Pharmaceutical Association

TESTIMONY OF RALPH G. NEAS

PRESIDENT AND CEO

THE GENERIC PHARMACEUTICAL ASSOCIATION

"EXAMINING CONCERNS REGARDING FDA'S PROPOSED CHANGES TO GENERIC DRUG LABELING"

BEFORE THE ENERGY AND COMMERCE SUBCOMMITTEE ON HEALTH

UNITED STATES HOUSE OF REPRESENTATIVES

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Good morning Chairman Pitts, Ranking Member Pallone, and Members of Subcommittee. Thank you for inviting me to testify before the Subcommittee on the FDA's proposed changes to generic drug labeling.

I am Ralph G. Neas, President and CEO of the Generic Pharmaceutical Association (GPhA). GPhA represents the manufacturers and distributors of finished generic pharmaceuticals, manufacturers and distributors of bulk pharmaceutical chemicals, and suppliers of other goods and services to the generic industry.

Introduction

This year, we commemorate the 30th anniversary of the Hatch-Waxman Act, the bipartisan compromised signed into law by President Ronald Reagan on September 24, 1984. By any measure – and by every measure -- Hatch-Waxman is one of our nation's most effective laws.

The law struck a delicate balance between fostering competition and rewarding innovation and very quickly produced results. During the 22 years preceding Hatch-Waxman, only 15 generics had been formally approved by the FDA. But within one year after Hatch-Waxman became law, more than ***one thousand*** generic applications were submitted to the FDA.

Patients soon began reaping the benefits of the new law as hundreds of FDA-approved safe, effective and lower cost versions of prescription drugs made their way to pharmacies, health care centers, hospitals, and long-term care facilities.

Insurers and other third-party payers, including federal and state governments, also became beneficiaries of Hatch-Waxman, as the savings generated by generic medicines began adding up.

This remarkable law, initially projected to save maybe a few ***million*** dollars a year has saved U.S. consumers, patients and the health care system more than $1.3 trillion over the past decade — $217 billion in 2012 alone — which equates to $4 billion in savings every week. Generic pharmaceuticals fill 84 percent of the prescriptions dispensed in the U.S. but consume just 27 percent of the total drug spending.

The quality and affordability of generic medicines is vital to public health and the sustainability of the health care system, and the top priority for GPhA and generic manufacturers is protecting patient safety and assuring access to affordable medicines.

Generic drug companies proactively participate with the FDA in ensuring the timeliness, accuracy, and completeness of drug safety labeling in accordance with all current regulatory requirements. Most recently, the generic industry has demonstrated its commitment to patient safety through its support of the historic Generic Drug User Fee Act and last year's Drug Quality and Security Act.

Through both of these laws, which this Committee crafted on a bipartisan basis, the generic industry has demonstrated its commitment to assuring the quality of the prescription drug supply and promoting the public health, while also assuring patient access to affordable medicines. GPhA and our member companies are committed to assuring patient safety for the hundreds of millions of people who rely on our products to live healthier and longer lives.

Unfortunately, the FDA's recently proposed rule on prescription drug labeling would have the opposite effect. It would completely undermine the enormously successful Hatch-Waxman Act, and put both patient safety and health care savings at risk.

Disappointingly, the FDA's proposal as drafted would create substantial confusion for pharmacists, doctors, nurses, patients and others in the health care system by allowing for multiple, different drug labels in the market for the very same product, upending 30 years of law and regulation. This would not only jeopardize patient safety, but as a recent economic study has shown, would also create billions of dollars in annual increased costs for consumers, taxpayers, large and small businesses, and state and federal governments. The rule would decrease patient access, impede healthcare decisions and delivery, and make fewer generic drugs available.

All of this is antithetical to the basic purposes of Hatch-Waxman and would jeopardize its continued viability.

Hatch-Waxman Act and Sameness

The Hatch-Waxman Act permitted generic drug manufacturers to rely on findings of safety and efficacy for a brand drug as support for approval of the generic drug application, provided the proposed generic product was the “same as” the reference product upon which it is based. In order to ensure that generic drug manufacturers could enter the market to produce drugs less expensively, and not subject patients to unnecessary testing, Congress expressly exempted them from the expensive, time-consuming, and ultimately repetitive clinical testing and trials that already had been performed on the innovator drug. In turn, the brand-name drug industry was awarded additional product protection in the form of market exclusivity, patent term extensions, and patent protections.

Under this “sameness” requirement, generic pharmaceutical manufacturers must prove to the FDA that their version of a drug provides the same safety and efficacy as the brand product; contains the same active ingredient; is identical in strength, dosage form, and route of administration; and, importantly for today’s discussion, has the same labeling. Doctors, patients, and pharmacists can all have confidence in the safety and effectiveness of generic medicines.

Under the statute and regulations governing Abbreviated New Drug Application (ANDA) submission and approval, a generic drug product is required to maintain the same labeling as the Reference Listed Drug (RLD) after ANDA approval, with limited exceptions. As has been the case since the passage of the Hatch-Waxman Act, only the innovator company, and not a generic drug manufacturer, can add to or strengthen a warning without first obtaining FDA's approval.

Likewise, FDA can initiate labeling changes, including addition of warnings, if the Agency determines they are warranted on the basis of new information received after NDA approval. If the innovator company has received approval for a change in labeling, the Office of Generic Drugs (OGD) allows the generic manufacturer to revise its label to comply with the exact change approved for the innovator. The FDA's regulations implementing the Hatch-Waxman Act correctly explained that consistency between labeling of the brand and generic drug not only is required by the statute, but also is essential to avoid confusion in the marketplace.

In accordance with Hatch-Waxman, FDA has long maintained the position that labeling changes cannot be made unilaterally by a generic manufacturer. In fact, FDA had affirmed this requirement as recently as July 2013 in a guidance related to brand drug labeling changes ("Guidance for Industry" Safety Labeling Changes - Section 505(o)(4) of the FD&C Act").

Recently, the Supreme Court decisions *PLIVA, Inc. v. Mensing* and *Mutual Pharm. Co., Inc. v. Bartlett* acknowledged the clarity and unambiguity of the statutory language that requires a generic drug's label to be the same as that of its RLD and that prevents generic drug manufacturers from changing their labeling to include additional or strengthened warnings. The decision in *PLIVA v. Mensing* outlined the Court's understanding that the Federal Food Drug and Cosmetic Act (FFDCA) requires "the warning labels of a brand-name drug and its generic copy must always be the same – thus, generic drug manufacturers have an ongoing federal duty of sameness."

FDA's Proposed Rule

On November 13, 2013, the FDA issued a proposed rule regarding Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products. FDA made it clear that it intends to establish "parity" between ANDA and New Drug Application (NDA) sponsors by requiring ANDA sponsors to submit Changes Being Effected supplements (CBE-0) to modify their labeling when they receive or otherwise obtain new safety-related information. The labeling changes are expected even though they will result in the generic drug labeling differing from the RLD labeling.

It is difficult to overstate the negative implications of the Proposed Rule on the generic pharmaceutical industry and on patient safety. The Proposed Rule creates a regulatory framework whereby multiple, different labels, including

different warnings, can simultaneously exist in the marketplace for the same drug with the same active ingredient. GPhA and our member companies are strongly concerned that the FDA's proposed rule strikes at the very heart of the "sameness principle" that is fundamental to the Hatch-Waxman Act.

Generic manufacturers only have access to the scientific and medical evidence for their individual products, representing a fraction of the total market. They do not readily have access to the clinical trial data and evidence of the brand manufacturer or current information and data from other generic manufacturers; only the FDA has access to all data and information, as that information is proprietary. A generic manufacturer that unilaterally changes its label therefore does so with limited, incomplete information. Such a labeling change may actually do more harm than good since it would disregard years of the brand company's scientific and medical history on the product. Since the FDA is the only entity that has access to all the information and has the expertise to evaluate and address this information, it is the only body in a position to decide whether a labeling change is warranted.

Adverse Event Reporting

After approval, generic manufacturers still have extensive obligations under federal law to ensure that their products are safe and properly manufactured. Generic manufacturers develop written procedures to closely monitor their products and for reporting of adverse events. All adverse events must be reported to the FDA. Serious and unexpected events are reported within 15 days,

and all others are reported quarterly or annually. Generic manufacturers also must submit annual reports that address safety and effectiveness issues for their products. The generic industry takes these pharmacovigilance requirements very seriously and is committed to assuring that FDA receives all adverse event information in a timely manner.

In its rulemaking, the Agency states that the recent *Mensing* decision alters the incentives for generic manufacturers to comply with these requirements for robust postmarketing surveillance, adverse event reporting, and ensuring the accuracy of product labeling. This is simply untrue. A generic manufacturer has exactly the same reporting and surveillance obligations now as it did prior to the Supreme Court decision. Moreover, there is no evidence that generic drug manufacturers do not comply with their existing post-marketing obligations or that they do not compile and submit the periodic reports.

Some proponents of the rule change have argued that since the marketplace has changed since the passage of Hatch-Waxman and generics now make up a majority of all prescription drugs dispensed in the U.S., a generic manufacturer will now somehow have more complete information about the complete adverse event profile for a single product. This reasoning is severely flawed. Grouping the total market share of all generic drug manufacturers for a particular drug ignores the reality of the marketplace. While one generic drug manufacturer may have a larger share of the market than another generic drug manufacturer, no

manufacturer has ready access to all the adverse event data; and therefore, cannot make a totally informed decision.

Provider Confusion

Uniform safety information provides certainty for patients, doctors, pharmacists and nurses and assures all healthcare practitioners that they can rely on consistent information to inform their decisions and patient conversations. Identical labels underscore a critical point — once generic medicines pass through extensive FDA review, they are proven scientifically equal to the brand medicine in terms of safety, efficacy and quality.

By creating a framework under which one drug could have multiple different warning labels, the proposed rule would compromise patient safety. GPhA is very concerned that multiple versions of critical safety information would lead to unnecessary confusion and uncertainty for prescribers and other healthcare professionals, with harmful consequences for patients. A unilateral change by one generic manufacturer to the warnings section of its label could inaccurately imply therapeutic differences between the generic drug and the brand drug that do not exist, and therefore could be misleading to healthcare professionals and consumers. The danger of negative effects for patients, including a reduction in adherence to their doctor's prescribed regime, is very real.

Requiring generic manufacturers to make unilateral changes, based on incomplete information, will lead to a flood of unnecessary labeling changes. The exaggeration of

risk and inclusion of unsubstantiated warnings will cause provider confusion and discourage the use of beneficial treatments.

Economic Impact

Flooding the marketplace with multiple versions of labels for the same medicines would not only seriously jeopardize patient safety, but also would burden consumers, taxpayers, large and small businesses, and state and federal governments with billions of dollars in increased costs for generic medicines. A recent analysis by economic consulting firm Matrix Global Advisors found that the proposed prescription drug labeling rule would add $4 billion dollars annually to the nation's already high health care costs. Of the projected increase in health care costs, the analysis estimates that Medicare and other government programs will incur $1.5 billion in annual new spending, while private insurers and patients will pay $2.5 billion per year.

The proposed rule would expose generic drug manufacturers to substantial new tort liability costs, which in turn would require them to adjust prices to stay in business, withdraw products, or decline to launch new affordable versions of brand medicines. Increased liability would also accrue to pharmacists, physicians and other participants in the health care system, beyond the substantial confusion for all stakeholders, impeding health care decisions and delivery.

The result would be fewer generic drugs coming to market and manufacturers withdrawing from certain high-risk markets, leading to drug shortages, the underutilization of affordable generics medicines, and ultimately increased prescription drug spending.

Unfortunately, neither the FDA nor the Office of Management and Budget (OMB) conducted a robust cost-benefit analysis – as OMB is required to do – to examine any of these potential pitfalls and increased costs. The FDA overlooked the proposed rule's very real financial impact on the affordability and availability of generic medications for patients and all stakeholders in the drug supply chain.

Public Health

Since the passage of the Hatch-Waxman Act, generic manufacturers have fulfilled important pharmacovigilance responsibilities to protect the patients they serve. GPhA fully supports a streamlined, efficient, and transparent process for timely submission and updating of safety information regarding pharmaceutical products for health care practitioners and the general public. We would support a process in which generic firms would actively assist FDA in its determination that a change to labeling is warranted based upon new safety information and in an efficient and prompt review of proposed changes by FDA. A key element of any new system must include timely FDA review of all available clinical data and safety signals, including the proprietary, non-public data of the NDA holder.

Such a system would advance our shared goals of protecting the public health and improving patient safety.

Many proponents of the rule change cite a desire to address the federal preemption of state failure-to-warn claims against generic manufacturers affirmed by *Mensing*. In our view, as a federal public health agency, the FDA should focus on assuring patient safety, and not on state tort liability claims.

Conclusion

The sustainability of our health care system, indeed our national economy, depends on the continued access to safe, effective, more affordable generic medicines in a timely manner as envisioned under Hatch-Waxman. Patients and healthcare practitioners must continue to have access to consistent, transparent information in order to best inform treatment decisions. The FDA's rule as presently drafted would severely undermine all of these goals.

While GPhA strongly opposes the FDA's Proposed Rule on Labeling, we would welcome the opportunity to work with others in the health care system, in a multi-stakeholder collaboration, to assist the FDA in strengthening the current labeling regulations. Inclusiveness has to be the operating principle. The FDA should hear from pharmacists, physicians, patient advocates, payors, and others in the pharmaceutical supply chain who could offer expertise, experience, and perspective.

The generic pharmaceutical industry will continue to work with the Congress, FDA, and other stakeholders to make sure that any changes to labeling rules and regulations protect patient safety, align with federal laws, and do not hinder patient access to more affordable generic medicines.

Thank you, Mr. Chairman, and I would be happy to answer any questions you may have.

SUMMARY OF TESTIMONY OF RALPH G. NEAS, PRESIDENT AND CEO OF
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"EXAMINING CONCERNS REGARDING FDA'S PROPOSED CHANGES TO GENERIC DRUG LABELING"

GPhA is the nation's leading trade association for the generic drug industry. Generic pharmaceuticals fill 84 percent of the prescriptions dispensed in the U.S. but consume just 27 percent of the total drug spending, and the use of generic drugs has saved U.S. consumers and the health care system $1.3 trillion over the past decade.

Patient Safety: The top priority for generic manufacturers is protecting patient safety and assuring access to affordable medicines. Generic drugmakers proactively participate with FDA to ensure the timeliness, accuracy, and completeness of drug safety labeling in accordance with all current regulatory requirements. We are committed to assuring patient safety for the hundreds of millions of people who rely on our products.

Hatch-Waxman Act of 1984: The Act has been enormously successful. Under its "sameness" requirement, generic manufacturers must prove to FDA that a generic provides the same safety and efficacy as the brand; contains the same active ingredient; is identical in strength, dosage form, and route of administration; and has the same labeling. These requirements give patients and providers confidence in the safety and effectiveness of generic medicines.

Adverse Event Reporting: Generic manufacturers have extensive post-approval obligations to ensure that products are safe and properly manufactured. All serious and unexpected adverse events are reported within 15 days, and all others are reported quarterly or annually, in addition to annual reports on the safety and effectiveness of products.

FDA's Proposed Rule: GPhA is strongly concerned that the FDA's proposed rule strikes at the very heart of the "sameness principle" that is fundamental to the Hatch-Waxman Act. It creates a regulatory framework whereby multiple, different labels, including different warnings, can simultaneously exist in for the same drug with the same active ingredient. Generic manufacturers, who only have access to the data for their individual products and do not have access to the brand clinical trial data, should not make unilateral label changes. The FDA, the only entity with access to all the information, should make these labeling decisions.

Provider Confusion: Uniform safety information provides certainty for patients, doctors, pharmacists and nurses and assures that they can rely on consistent information to inform their decisions. The proposed rule would create substantial confusion for providers by allowing for multiple, different drug labels for the same product

Public Health: A unilateral change by one generic manufacturer to a product's label would inaccurately imply therapeutic differences between the generic and brand drug that do not exist. The exaggeration of risk and inclusion of unsubstantiated warnings will cause confusion for providers and consumers and discourage the use of treatments.

Economic Impact: The rule would not only jeopardize patient safety, but as a recent economic study has shown, would also create billions of dollars in annual increased costs for consumers, taxpayers, businesses, and state and federal governments: $4 billion annually. The rule would decrease patient access, impede health care decisions and delivery, make fewer generic drugs available, and lead to shortages of critical generic drugs.

Conclusion: GPhA fully supports a streamlined, efficient, and transparent process for timely submission and updating of safety information for generic drugs for health care practitioners and the public. We would support a process in which generic firms would actively assist FDA in its determination that a change to labeling is warranted based upon new safety information and in an efficient and prompt review of proposed changes by FDA. A key element of any new system must include timely FDA review of all available clinical data and safety signals, including the proprietary, non-public data of the NDA holder. Generic manufacturers should not make labeling changes unilaterally. We would welcome the opportunity to work with others in the health care system, in a multi-stakeholder collaboration, to assist the FDA in strengthening the current labeling regulations.