



April 30, 2014

The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health
420 Cannon House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
Subcommittee on Health
237 Cannon House Office Building
Washington, DC 20515

Dear Chairman Pitts and Ranking Member Pallone,

GPhA would like to submit the following in response to your recent additional questions for the record for the hearing before the Subcommittee on Health on Tuesday, April 1, 2014, entitled "Examining Concerns Regarding FDA's Proposed Changes to Generic Drug Labeling."

Response to the Honorable Joseph R. Pitts

- 1. In the proposed rule, the FDA discusses how recent Supreme Court decisions have altered the incentives for generic manufacturers to comply with post-marketing surveillance and adverse event reporting requirements. It is my understanding that after approval, generic manufacturers still have several obligations under federal law to ensure that their products are safe and properly manufactured, is that correct?**
 - a. All manufacturers must report serious and unexpected adverse events within 15 days and all others quarterly and/or yearly, is that correct?**
 - b. Generic manufacturers must also submit annual reports that address safety and effectiveness issues for their products, is that correct?**
 - c. Is there any evidence that generic manufacturers are not complying with their post-marketing obligations?**

Response

After the FDA approves a generic drug, generic manufacturers still have several obligations under federal law to ensure that their products are safe and properly manufactured. These post-approval safety obligations include adverse event reporting.

Yes, all manufacturers must report serious and unexpected adverse events within 15 days and all others through quarterly and yearly reporting requirements.

Yes, additionally, generic manufacturers must also submit annual reports that address safety and effectiveness issues for their products.

It is my understanding that generic manufacturers are complying with the law, and there is no evidence of which I am aware to suggest that manufacturers are not complying with their post-marketing obligations. FDA has reaffirmed this in written statements. If a company fails to comply with the reporting requirements, the FDA may issue a warning letter. If the problem persists, FDA can bring more severe actions.

Response to the Honorable Henry A. Waxman

Mr. Neas, I regret I was unable to stay for the second panel of our hearing to ask you questions about the economic assessment of the FDA rule performed for GPhA by Alex Brill.

Mr. Brill notes that he was unable to find any conclusive estimates of total product liability spending specific to the brand pharmaceutical industry through a literature review and through an analysis of brand pharmaceutical manufacturer financial statements. He therefore used a 1993 study that estimated that product liability insurance premiums for bodily injury represented 0.67% of an industry's sales. By then converting drug company sales to drug spending, he calculated that total pharmaceutical company spending (brand and generic) on product liability was 0.4% of consumer spending in 2009. He then calculated that brand companies spent \$758.3 million in 2012 on product liability coverage. By dividing that cost by 652.5 million prescriptions given for brand drugs, he calculated that brands spent \$1.16 per prescription in 2012. By multiplying \$1.16 by 3.4 billion prescriptions sold for generic drugs, he calculated that generic companies would spend \$4 billion on product liability in 2012. My questions are based on these calculations.

- 1. Do all drug manufacturers, brand and generic, carry liability insurance now, even if they are not subject to state tort failure-to-warn liability? For example do they carry insurance to provide coverage if they are sued for patient injury due to misbranding, manufacturing defects of contaminated products.**

Response

Yes. In general, generic drug manufacturers currently carry insurance for liability in areas other than state tort failure-to-warn claims. Some generic manufacturers are self-insured. Since GPhA represents generic drug manufacturers, I can only speak to their practices and not others.

- 2. What are the estimated costs of the insurance they currently carry?**

Response

These costs will vary from company to company due to a variety of factors, including company size and product portfolio.

3. Are there more recent estimates available of the liability insurance costs across industries than the 1993 model used by Mr. Brill?

Response

I am not aware of more recent estimates of the liability costs across industries. I would note, however, that Mr. Brill indicates that this proxy is conservative. On page 9, he writes, "It should be noted that for the purposes of our analysis, this is a conservative estimate for two reasons: 1) it does not include firms' self-insurance or spending on uninsured losses, and 2) the pharmaceutical industry bears a disproportionate liability burden relative to other industries. Because brand manufacturers typically self-insure, this is not a perfect proxy, but it does approximate product liability spending – and at a level lower than what brand drug companies likely spend on product liability.

4. Did Mr. Brill survey actual liability costs of generic drug manufacturers in 2012? If so, what were the costs?

Response

I am not aware that Mr. Brill surveyed generic drug manufacturers about actual liability costs in 2012.

5. If he did not, why not?

Response

Mr. Brill's study was conducted independently. I am therefore not in a position to speak to the methodological decisions he made.

6. The model calculates that total product liability protection for brand drugs in 2012 was \$1.16 per prescription. What percentage of that cost was for protection against failure-to-warn liability? Where in the study is that information provided? What is the basis for that estimate?

Response

It is my understanding that the \$1.16 per prescription estimate is a conservative proxy for brand drug product liability costs and should therefore not be understood to encompass total product liability spending. As Mr. Brill says on page 10, "These estimates should be considered conservative given that we use a proxy for product liability insurance premiums that is likely low, do not account for self-insurance and reserve spending, exclude certain drug spending, and do not model the effect of fewer or no generics in a given market."

7. The study estimates that the liability cost to the generic industry subsequent to finalization of the FDA proposed rule would be \$4 billion. What percentage of that

cost is due specifically to the FDA rule? What is the basis for your estimate? Where in the economic analysis is that information provided?

Response

It is my understanding that the estimate of \$4 billion pertains entirely to the FDA proposed rule. As Mr. Brill states in the executive summary, "The Proposed Rule could be expected to increase spending on generic drugs by \$4 billion per year."

- 8. On what basis did the study conclude that, on a per prescription basis, generic manufacturer liability protection costs after finalization of the FDA rule would be identical to that of brand manufacturers? Are there no additional costs relating to protecting the name of the brand, for example, or because less is known about the safety of a brand when it is first introduced onto the market?**

Response

In the section titled "Generic Product Liability Exposure" beginning on page 8, Mr. Brill analyzes "the degree to which generics would face exposure to product liability under the Proposed Rule" and finds "that generic and brand manufacturers would face exposure to product liability to a similar degree." Furthermore, Mr. Brill cites in this section additional evidence that brand and generic liability would be comparable based on the relative frequency of label changes for multisource products identified in the FDA's Preliminary Regulatory Impact Analysis.

- 9. What were the generic manufacturer liability costs prior to the 2011 *Pliva v. Mensing* Supreme Court decision shielding generic manufacturers from failure-to-warn tort liability? I assume those costs were significant, based on what my staff were hearing from your companies about those costs during the lead-up to the *Mensing* case. What were their liability costs after the decision?**

Response

As noted previously, liability costs will vary from company to company due to a variety of factors, including company size and product portfolio. These costs would not have changed following the 2011 decision since the Supreme Court merely affirmed the federal preemption of state failure-to-warn claims that already existed.

Response to the Honorable Tim Murphy

- 1. According to the proposed rule, this policy change is meant to bring parity between brand drug manufacturers and generic drug manufacturers by allowing generic drug manufacturers to propose labeling changes through the CBE-0 process. Could this proposed rule lead to the same medicines having multiple versions of labels, all with different safety information? Do you believe that having different labels for the same drug product could cause confusion for patients and providers?**

Response

Yes, having multiple labels would cause confusion for patients and providers. Although the proposed rule purports to create parity between brand name and generic drug manufacturers with respect to updating labeling, the actual effect will be massive confusion for providers and patients. Generic manufacturers only have access to the scientific and medical evidence for their individual products. They do not have access to the clinical trial data and other proprietary information of the brand manufacturer or current information and data from other generic manufacturers. Only the FDA has access to all the data and information. A generic manufacturer that unilaterally changes its label therefore does so with incomplete information. The proposed rule, however, would allow all generic manufacturers to propose labeling changes. On average, there are eight generic versions for each branded product. If each generic proposes a different labeling change, there could very well be eight different labels for the same molecule. If these labeling change submissions are staggered and not all together, it may be impossible for the molecule to have consistent labeling. Multiple versions of critical safety information would lead to unnecessary confusion and uncertainty for prescribers and other healthcare professionals, with harmful consequences for patients.

More than twenty companies and organizations within the pharmaceutical supply chain – pharmacists, wholesalers, PBM's, chain drug stores – as well as patient advocacy, disability, veterans, and minority organizations have expressed concern that the proposed rule could result in multiple versions of labels for the same medicine, which in turn may create uncertainty throughout the drug supply chain.

The generic industry and others have worked hard at ensuring consumer confidence in generic drugs and that the generic and brand will produce the same clinical effect. Prescribers and consumers have tremendous confidence in generic drugs because the FDA approves them as the same – bioequivalent – to the referenced brand drug. Allowing different warning labels between the brand and the generic threatens to undermine consumer confidence in generic medicines, potentially decreasing their use and eroding savings to the health care system. Up until last year, the FDA has consistently stated that uniform labeling will assure physicians, health professionals, and consumers that a generic drug is as safe and effective as its branded counterpart.

- 2. Ensuring that the same medicines have uniform safety information ensures that all health care providers and patients have the same information about the medicine whether it be brand or generic. Do you believe that under the proposed rule, generic drug manufacturers will lead to more, not less, labeling changes whenever new safety information about a drug product comes to light? Please explain.**

Response

The proposed rule creates an incentive for both brand and generic manufacturers to put more warnings on the labeling in order to protect themselves against failure to warn claims. Many of our smaller generic companies, which only have a handful of products,

cannot absorb the cost of a failure-to-warn suit. In an effort to protect themselves from such potential litigation, companies may overwarn on the labeling. As you know, the FDA for years has opposed adding warnings for the sake of adding warnings because it could downplay the importance of the warning, or physicians could stop reading the labeling all together.

GPhA and its members are committed to ensuring the public's health. Sound medical and scientific evidence should guide any type of labeling change.

Response to the Honorable Renee Ellmers

- 1. According to the FDA, the estimated proposed annual cost if this rule were to be implemented, to generic manufactures is between \$128 and \$6,683 per year. However, a recent study sponsored by GPhA found that the proposed rule would increase U.S. health care costs by \$4 billion annually. Will you explain some of the reasons why this study estimates much higher costs than FDA?**

Response

The proposed rule would burden consumers, taxpayers, businesses, and state and federal governments with billions of dollars in increased costs for generic medicines by inundating the marketplace with multiple versions of labels for the same medicines. An 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 an appropriate 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.

2. In the proposed rule, FDA suggests that only 20 or so labeling changes would be submitted by generic manufacturers annually if the rule went into effect. Do you believe that this is an accurate assessment of how many labeling changes would be submitted annually under this proposed change? Would you agree that the proposed rule could lead to more, not less, labeling changes by generic drug manufacturers as new safety information comes to their attention?

Response

I do not believe the FDA assessment of only 20 labeling changes per year is accurate. As you know, this proposed rule would allow generic drug manufacturers to propose labeling changes. On average, there are eight generic versions for each branded product. If each generic proposes a different labeling change, there could very well be eight different labels for the same molecule. If these labeling changes come in staggered and not all together, it may be impossible for the molecule to have consistent labeling. This would result in patient and provider confusion.

Thank you again for the opportunity to testify before the Subcommittee.

Sincerely,

A handwritten signature in black ink that reads "Ralph G. Neas". The signature is written in a cursive style with a large, prominent initial "R".

Ralph G. Neas
President and CEO