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## Major Changes Set in Motion For Generic Drugs in 2010

For generic-drug makers, 2010 was a year that began laying the groundwork for changes likely to impact the industry for years to come.

The most immediate change came early in the year when President Barack Obama signed into law the Patient Protection and Affordable Care Act (*WDL*, [March 29, 2010](#)).

After a hard-fought battle in Congress that lasted more than a year, the final bill eventually contained several provisions impacting drugmakers. The most notable one, perhaps, impacting generic companies was the creation of a biosimilars pathway.

Even before the legislation was passed, there was a heated debate surrounding the specifics of the pathway, particularly with

*(See [Generics](#), Page 2)*

## In 2010, Industry, Particularly J&J, Faced GMP Challenges

In 2010, the drug industry faced numerous challenges to good manufacturing practice (GMP) compliance, including supplier issues, viral contaminations and unusual smelling drugs. But some companies, particularly Johnson & Johnson (J&J), grabbed more than their share of headlines in 2010.

J&J's manufacturing troubles actually kicked off in late 2009 with a recall of Children's Tylenol, followed quickly by an unassociated, limited recall of Tylenol Arthritis Pain caplets due to an "uncharacteristic smell or taste" with certain lots of the product.

The company first received complaints of musty and moldy odors in certain drug products in September 2008 but did not notify the FDA until a year later, prompting an FDA warning letter to start off the year (*WDL*, [Jan. 25, 2010](#)).

Pfizer also recalled drugs last year for the same odor issue, thought to be caused by trace amounts of 2,4,6-tribromoanisole (TBA), which

*(See [GMP](#), Page 12)*

## Generics, from Page 1

regard to how long an exclusivity period manufacturers of innovator biologics should be granted to market their products without generic competition.

Among the issues that must be sorted out are whether the agency will require clinical trials before approving a biosimilar and, when a drug is approved, how new indications will be granted or how a product will be deemed interchangeable with its brand-name counterpart.

The FDA began its attempts to answer those questions in November when it hosted a public meeting on the pathway, but stark differences between generic and brand-drug makers quickly emerged (*WDL*, Nov. 8, 2010).

While generic-industry heavyweights such as Teva Pharmaceutical Industries called on the agency not to require any additional testing to have a product deemed interchangeable or to approve additional indications, brand companies including Merck and Roche portrayed such proposals as potentially unsafe (*WDL*, Nov. 8, 2010).

### Generic User Fees Revived

Despite both sides' desire for a quick resolution though, the FDA is under no timetable for setting its regulations and industry experts have predicted it could be years before any formal guidance is issued (*WDL*, Oct. 25, 2010).

In the meantime, both the agency and generic-drug makers will have their hands full preparing for a separate battle looming over generic user fees.

While past attempts at creating a system of user fees for generic drugs have been met with consternation and ultimately failed, the FDA — which faces a growing backlog of generic drug applications that has now reached more than 2,000 — again revived its efforts last year.

Whether drugmakers will oblige remains to be seen, but GPhA has been generally supportive

of adopting the fees. The group has insisted, however, that the FDA develop a program that provides generic-drug makers with specific agency performance goals.

With generic and brand-drug makers continually sparring in court over patent infringement and other cases, it is not often the two sides find an issue that brings them together.

2010 offered that rare feat, though, as the two sides joined together to oppose a strong push from the FTC to put an end to so-called pay-for-delay deals, which the agency says delays consumers' access to generic drugs.

But the agency made its intention to stop the agreements known early in the year, stating in April that eliminating the deals was among its top priorities in 2010 (*WDL*, May 3, 2010).

### Pay-for-Delay Fight

Enforcing that goal proved to be rather more difficult for the FTC, however, as the agency failed to sway several courts to its arguments against the deals and became entangled in a dispute with Watson Pharmaceuticals over a deal in an attempt to induce testimony from the company's CEO, Paul Bisaro (*WDL*, Aug. 23, 2010).

The FTC's efforts to enact a legislative ban on the deals also failed to materialize, as a provision from Sen. Herb Kohl (D-Wis.) that would have outlawed the agreements was added, and then dropped, from several different bills.

Still, the agency has shown no intention of giving up its fight, appealing to the Supreme Court in December to take on its case challenging a pay-for-delay deal between Bayer and Barr Laboratories over the antibiotic Cipro (ciprofloxacin) (*WDL*, Dec. 13, 2010).

And even if that is not successful, drugmakers will still want to keep an eye on the agency in 2011, as an FTC commissioner said in November that the agency is considering issuing its own rule as a "Plan C" in putting a stop to the deals (*WDL*, Nov. 29, 2010). — David Belian

## FDA Denies New Indication for Copaxone; Teva Remains Upbeat

The FDA has denied Teva Pharmaceutical Industries' attempt to gain a new indication for its multiple sclerosis treatment Copaxone, but the decision may turn out to be a blessing in disguise for the company by delaying generic competition to the blockbuster drug.

The FDA sent Teva a complete response letter indicating that it could not approve the company's application for a lower-dose version of Copaxone (glatiramer acetate) because the drug's mechanism of action is not fully understood and even a formulation change could impact clinical outcomes, Teva says in a Dec. 23 release.

"Unless you can provide a convincing argument that the new higher concentration/lower volume formulation does not have an impact on efficacy, an adequate and well controlled efficacy study will be needed to support efficacy of this new formulation," the FDA tells Teva in its letter.

### Implications for Generic Copaxone

But rather than appearing downcast, the company trumpeted the news, saying that the agency's decision supports its case that any future generic versions of Copaxone should require full clinical trials before being approved.

The FDA's response "supports Teva's belief that even slight changes to a glatiramoid like Copaxone can significantly and unpredictably influence the efficacy, toxicity and immunogenicity profile of the compound," the company says.

Indeed, analysts covering Teva agreed with the company, with J.P. Morgan analyst Chris Schott noting in a Dec. 23 report that the FDA's complete response letter highlights the "high hurdle" potential generic manufacturers of Copaxone will face in gaining approval.

"While we are unlikely to have full clarity on this issue for some time, today's news, in our view, increases the probability of clinical data

requirements for generic Copaxone manufacturers," Schott says.

If the FDA does eventually require clinical trials for any generic Copaxone, it would be a major boost to Teva, which has been lobbying for such a move for some time.

The company has filed multiple citizen petitions with the agency, most recently last month, and has hit several of its competitors with patent-infringement lawsuits after they filed applications to market a generic version of the drug ([WDL, Dec. 20, 2010](#)).

With \$2.8 billion in worldwide sales in 2009 — 18 percent of Teva's net sales for the year — it is not difficult to see why the company is putting up such a vigorous fight to require the trials for Copaxone.

### Sandoz/Momenta Copaxone ANDA

Looming in the background, however, is an FDA decision from earlier this year to approve Sandoz and Momenta Pharmaceuticals' generic version of Sanofi-Aventis' Lovenox (enoxaparin sodium for injection), another complex molecule, without requiring clinical trials ([WDL, Aug. 2, 2010](#)).

Like Teva, Sanofi had sought to have the FDA require clinical trials for generic Lovenox, filing citizen petitions with the agency and launching lawsuits against generic-drug makers.

The company's efforts ultimately proved fruitless though.

Following its approval in July, generic Lovenox went on to erode more than half of Sanofi's market share in its first nine weeks on the market and post sales of nearly \$300 million ([WDL, Nov. 8, 2010](#)).

While Teva will certainly have one eye on that decision as generic Copaxone applications — including from Sandoz and Momenta — move forward, the company is hedging its bets with its own application for a generic version of Lovenox. — David Belian

## Amphastar Asks Court to Make FDA Approve Its Generic Lovenox ANDA

Amphastar Pharmaceuticals has amended a lawsuit against the FDA and is now asking a federal court to force the agency to approve its ANDA for generic Lovenox, which the company says has been unfairly delayed.

In an amended complaint filed Dec. 22 in the U.S. District Court for the District of Columbia, Amphastar, which claims it is the first company to file an ANDA for generic Lovenox (enoxaparin sodium), argues that the FDA has continually denied its application without proper justification.

“Amphastar has repeatedly met the standards set by the FDA, only to see those standards shift or to have new standards arbitrarily and capriciously created,” Amphastar says in its complaint. “Every time Amphastar clears the agency’s latest obstacle to approval, a new one is created.”

### Amphaster Alleges Unfair Treatment

The most recent delay came Nov. 30 when the FDA informed Amphastar that its raw heparin supplier in China would need to be inspected again, Jason Shandell, vice president and general counsel for Amphastar, told *WDL*. The supplier has been cited for good manufacturing practice violations in the past.

Although the letter also showed a path to approval, the company has not yet decided whether it will proceed with the reinspection, Shandell added.

Amphastar filed suit against the FDA in October accusing the agency of unfairly detaining two shipments of semi-purified heparin earlier this year, saying the holdup was part of arbitrary regulatory treatment that has delayed approval of its ANDA (*WDL*, Nov. 1, 2010).

However, in November, the FDA released the detained heparin, just days after Amphastar filed for an injunction to force the agency to do so (*WDL*, Nov. 22, 2010).

Amphastar’s desire to have its application quickly approved has been buoyed by huge sales Sandoz and Momenta have seen from their generic version of Lovenox, approved last year.

The generic brought in about \$292 million in sales and captured more than half of the brand drug’s market share in its first nine weeks on the market (*WDL*, Nov. 8, 2010)

In its complaint, Amphastar also accuses the agency of showing favoritism to Sandoz and Momenta. Shandell told *WDL* he believes the FDA is “manipulating” the company’s application and that CDER Director Janet Woodcock is to blame.

“While Amphastar’s enoxaparin ANDA has languished, the FDA’s favored competitor, which filed its enoxaparin ANDA more than two years after Amphastar, has been allowed to be the exclusive producer of a generic enoxaparin sodium injection product in the United States, reaping a financial windfall in the process,” the complaint says.

The FDA declined to comment on the lawsuit.

Amphastar’s amended complaint is available at [www.fdanews.com/ext/files/AmendedComplaint.pdf](http://www.fdanews.com/ext/files/AmendedComplaint.pdf). — David Belian, Jonathan Block

## FTC: Consider Patent Strength In Pay-for-Delay Cases

As the FTC struggles to gain ground in its ongoing legal battles against pay-for-delay deals, the agency is trying out a new strategy — urging a federal court to acknowledge that the strength of a brand-drug maker’s patents on a drug should be considered before determining whether an agreement violates antitrust laws.

The argument was put forth by the FTC in a brief filed Dec. 15 with the U.S. Court of Appeals for the Eleventh Circuit. The court is considering an agency challenge to an alleged pay-for-delay deal between Watson Pharmaceuticals and Abbott Laboratories over the male hypogonadism treatment AndroGel (testosterone).

(See **Pay-For-Delay**, Page 6)

## Comments: SEC Whistle-Blower Rule Undermines Corporate Compliance

The SEC's proposed whistle-blower program needs improvement as it could reward employees for not using their companies' corporate compliance programs, according to comments on the proposed rule.

The rule, which describes how individuals can provide tips on securities law violations, does not require them to first use their company's internal reporting procedures before notifying the commission and possibly receiving monetary rewards.

The Association of Corporate Counsel (ACC), which includes lawyers from several major pharmaceutical companies, believes the proposals will thwart internal compliance. In its comments on the rule, the ACC suggests a requirement to first use existing internal compliance and reporting systems and then giving the company reasonable time to resolve the issue before making any submission to the SEC.

### Incentive to Report to SEC

The deadline for public comment on the program was Dec. 17, 2010 ([WDL, Nov. 8, 2010](#)).

The letter to the SEC from the ACC, which includes lawyers from Allergan, Pfizer, Gilead and GlaxoSmithKline as signatories, also notes the proposed rule could cause employees to time their reporting to maximize their reward.

"Prospective whistle-blowers will quickly learn that waiting to allow the problem to fester and then to report directly to the commission will yield a better award than reporting to their compliance officials soon after learning of the misconduct," the letter says.

The Washington Legal Foundation (WLF) agrees with the ACC's concerns, saying, "It would be both ironic and counterproductive if, as a result of the SEC's new whistle-blower program, effective corporate compliance programs were rendered completely superfluous."

The WLF further asks the SEC to close a loophole allowing wrongdoers to profit from their own actions. Under the proposed rule, a whistle-blower becomes ineligible only if criminally convicted of a violation connected to the violation underlying the reward. This leaves civil enforcement actions off the table.

The WLF requests the term "whistle-blower" be limited to an individual who provides information about potential violations of securities law by another person.

The National Association of Corporate Directors (NACD) also submitted similar comments, seeking a requirement that employees make use of corporate compliance systems before submitting allegations to the SEC.

NACD believes companies should be able to use existing disciplinary measures for employees who bypass internal compliance systems or make false allegations. As the proposed rule is written, it seems potential whistle-blowers have retaliation protections whether or not they satisfy the conditions for an award, NACD says. — April Hollis

## American Regent Recalls Drugs Over Particulates in Vials

American Regent is recalling injectable drugs, including dexamethasone sodium phosphate injection manufactured by Luitpold Pharmaceuticals, because some vials either contain particulates or have the potential to form particulates before their expiration dates.

The recalls affect seven lots of 4 mg/mL, 30 mL multi-dose vials of dexamethasone, a corticosteroid, according to a FDA MedWatch issued Dec. 26.

The company is also recalling nine lots of sodium bicarbonate injection 7.5%, 44.6 mEq/50mL, single-dose vials and 30 lots of sodium bicarbonate injection 8.4%, 50 mEq/50mL, single-dose vials because some contain particulates.

American Regent, which distributes the products, is investigating and is in ongoing discussions with the FDA. — April Hollis

## Pay-For-Delay, from Page 4

In their own brief in the case filed in November, Watson and Abbott argued that the strength of a brand drug's patents was irrelevant and that a court could not be asked to predict the outcome of potential litigation (*WDL*, Nov. 22, 2010).

Their argument was buoyed by the U.S. District Court for the Northern District of Georgia, which ruled in February that patent litigation is too complex and the results too uncertain to assert such a claim (*WDL*, March 1, 2010).

But in its reply brief, the FTC says that the strength of a brand drug's patents is a crucial factor in determining whether a pay-for-delay deal prevented a generic drug from entering the market as early as possible.

"The likelihood of the patent holder prevailing in its infringement action helps define the

patent's potential exclusionary scope, and the size of payments relative to the profits the infringers could expect is relevant to assessing that likelihood," the FTC says.

And while Watson and Abbott argued that the Eleventh Circuit's own rulings in previous cases have set a precedent against considering a brand drug's patent strength, the FTC disagrees and says if that is the case, the court should reconsider those rulings.

"[Watson and Abbott] draw several lessons from this court's cases, but get them all wrong," the agency says. "Regardless of what other courts have held, this court has not held that reverse payments, or the patentee's odds of success in infringement litigation, are irrelevant."

The commission's brief in *Federal Trade Commission v. Watson Pharmaceuticals, Inc. et al.*, is available at [www.fdanews.com/ext/files/AndroGel Brief.pdf](http://www.fdanews.com/ext/files/AndroGel%20Brief.pdf). — David Belian

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## HHS Report: Pay-for-Delay, ANDA Backlog Hamper Generic Savings

A new HHS report is highlighting pay-for-delay deals and the FDA's backlog of ANDAs as key factors that could hamper the growth of savings generated by generic drugs.

While noting that use of the drugs and subsequent government savings have grown to record levels in recent years, the report released last month by HHS' Office of the Assistant Secretary for Planning and Evaluation (ASPE) says that eliminating the controversial agreements and clearing up the backlog could lead to even greater savings.

In addition, differing state laws that limit the ease with which pharmacists can interchange brand drugs for generics could also mitigate potential savings, the report says.

Pay-for-delay deals have been a source of consistent scrutiny throughout the government in recent years, with the FTC in particular leading the charge to outlaw the agreements.

The agency has said that the deals keep generic drugs off the market for an average of 17 months longer than agreements without payments and will cost consumers and taxpayers \$35 billion over the next 10 years (*WDL*, May 3, 2010).

The December report cited those FTC figures when determining its position on whether banning the deals would lead to increased savings, and that drew criticism from the Generic Pharmaceutical Association (GPhA).

"Unfortunately, and very regrettably, the report erroneously concluded that savings could be achieved by banning patent litigation settlements between brand and generic companies," GPhA says. "ASPE failed to do any independent analysis or evaluation of the FTC's claim which has been criticized by several economists as seriously flawed. It based its conclusion on data that, although routinely repeated by opponents of patent settlements, is simply wrong."

Meanwhile, the FDA has acknowledged that its increasing backlog of generic-drug

(See HHS, Page 8)

## Cephalon Gives Up on Jet Lag sNDA For Nuvigil After Second Rejection

Cephalon is abandoning an indication for Nuvigil as a treatment for excessive sleepiness associated with jet lag after receiving a second complete response letter for its sNDA.

The FDA restated concerns from its March complete response letter about patient assessment findings for Nuvigil (armodafinil), although Cephalon believes it met the agreed-upon safety and efficacy endpoints under its special protocol assessment, the company said Dec. 26. Further conversations with the agency, however, would be futile, Cephalon has decided.

The decision means Cephalon will not meet its stated goal of having a differentiated label for Nuvigil when its predecessor, Provigil (modafinil) goes off patent in April 2012. The

company, however, is still trying to move existing patients from Provigil to Nuvigil.

Cephalon had said it planned to file an sNDA for Nuvigil each year for five years, beginning in 2009 (*WDL*, Jan. 4, 2010). But it has abandoned efforts to get Nuvigil approved as an adjunctive schizophrenia therapy and discontinued another program to get the drug approved for traumatic brain injury.

That leaves only bipolar depression as a possible added indication for the drug, Baird's Thomas Russo says in a Dec. 27 analyst note. The company recently added a third trial in that program, which won't complete before Provigil goes generic.

The FDA approved Nuvigil in June 2007 to improve wakefulness in patients with excessive sleepiness associated with treated obstructive sleep apnea, shift work disorder or narcolepsy. — April Hollis

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## AstraZeneca's Brilinta Delayed By Complete Response Letter

The FDA has handed AstraZeneca a complete response letter for its blood-thinner Brilinta, delaying approval of the drug for the second time this year, despite a positive advisory committee recommendation.

The agency is asking for additional analyses of data from PLATO, a head-to-head clinical trial comparing Brilinta (ticagrelor) with Bristol-Myers Squibb/Sanofi-Aventis' Plavix (clopidogrel), the company said Dec. 17. The agency did not request additional studies as a prerequisite for approval.

AstraZeneca will respond as soon as possible and remains confident in the NDA, it said.

Feedback from the company suggests a response to the letter in January, according to Leerink Swann analyst Seamus Fernandez. In a Dec. 17 note, he writes that "the FDA's requests are not particularly onerous" and expects approval in six to nine months.

The letter is not the first setback for Brilinta. In September, the FDA added an additional three

months to its review of the drug. AstraZeneca did not give any indication as to why the agency was taking more time.

The delays come after an advisory panel overwhelmingly voted in July to recommend Brilinta's approval (*WDL*, Aug. 2, 2010).

Efficacy results from the pivotal PLATO study showed Brilinta bested Plavix in preventing thrombotic events such as heart attack and stroke.

Differences between countries in the multi-site study could be the sticking point with the FDA, says Bernstein analyst Tim Anderson, because agency reviewers noted concern about those results at the advisory panel meeting.

In the U.S. subset of the PLATO study, Brilinta patients actually fared worse than patients on Plavix, Anderson adds in a same-day note.

Generic Plavix is available in Europe, with generics in the U.S. expected in 2012. In addition, AstraZeneca's blockbuster cholesterol drug Crestor (rosuvastatin calcium) loses patent protection in 2016. — April Hollis

## HHS, from Page 6

applications is a problem for the agency but has insisted that the logjam is not preventing products from gaining approval.

That is because a majority of the applications the agency is waiting to review are for products that could not immediately enter the market anyway due to exclusivity on their brand counterparts, FDA Commissioner Margaret Hamburg said last year (*WDL*, Sept. 20, 2010).

But while generic companies seeking first-filer status may not see delays in entering the market, savings could still be limited if subsequent competing applications are delayed, ASPE says.

“Although FDA ensures that reviews of ANDAs for first generics are not delayed, speeding reviews of subsequent generic competitors may further decrease generic prices, as research shows that more generic competitors lead to lower prices,” the report says.

The ASPE report “Expanding the Use of Generic Drugs” can be found at [aspe.hhs.gov/sp/reports/2010/GenericDrugs/ib.pdf](http://aspe.hhs.gov/sp/reports/2010/GenericDrugs/ib.pdf). — David Belian

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## FDA Delays Guidance on Internet, Social Media Drug Promotion

The FDA has delayed issuing guidance on internet and social media promotion of FDA-regulated medical products, which had been anticipated before the end of the year.

The FDA said Dec. 22 that its Division of Drug Marketing, Advertising, and Communications’ (DDMAC) goal is to issue one draft guidance during the first quarter of 2011 on one of several topics:

- Responding to unsolicited requests;
- Fulfilling regulatory requirements when using tools associated with space limitations;
- Fulfilling postmarketing submission requirements;

- Online communications for which manufacturers, packers or distributors are accountable;
- Use of links on the internet; and
- Correcting misinformation.

DDMAC said it could not comment on when exactly draft guidance would be released or the order in which the topics would be addressed.

The delay is a disappointment to the pharmaceutical industry, because it requested FDA guidance on the use of social media over a year ago. During FDA public hearings in 2009, industry representatives asked for guidance on fair balance and when social media monitoring should trigger adverse event reports (*WDL*, Nov. 16, 2009).

A recent PricewaterhouseCoopers report recommended that companies monitor social media outlets, such as Facebook and Twitter, to take advantage of viral information of interest that may be posted there. — Molly Cohen

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**FDANEWS**

## Biogen Idec Asks to Update Tysabri Labeling Regarding PML Risk

Biogen Idec and Elan have submitted applications to U.S. and EU regulators asking that the labeling of their multiple sclerosis (MS) biologic Tysabri be updated to reflect the presence of a virus antibody as a risk factor in developing a rare brain infection.

The companies said Dec. 22 they have asked the FDA and the European Medicines Agency to review and approve updated prescribing information to reflect that MS patients with antibodies to the JC virus are at increased risk of developing progressive multifocal leukoencephalopathy (PML).

Between 50 and 60 percent of MS patients have a latent form of the JC virus, Biogen Idec spokeswoman Kate Weiss told *WDL*, adding that having the virus is a necessary precursor to potentially developing PML.

### Carrying Antibodies Increases Risk

“Our current hypothesis is that those patients who have antibodies to the virus may be at a higher risk of developing PML than those who don’t have the antibodies,” Weiss said. MS patients would have the antibodies only if they were exposed to the JC virus.

Tysabri (natalizumab) is approved in the U.S. to treat relapsing forms of MS and in the EU to treat relapsing-remitting MS. A total of 45 countries have approved the monoclonal antibody.

A diagnostic test exists to determine if a patient has the antibodies, and Biogen is developing its own antibody assay to detect the JC virus, according to Weiss.

Adding to the label the increased risk of PML for patients who carry the JC virus antibodies communicates “an additional factor for physicians and patients to consider when making treatment decisions,” she said.

Tysabri’s current labeling includes a boxed warning on PML risk and adds that the risk

increases the longer a patient has been on treatment.

As of Dec. 2, 2010, the total number of PML cases reported in Tysabri patients was 79. Of those patients, 16 have died.

According to data provided by Weiss, the risk of developing PML in those who have had more than 12 treatments is 1.54 out of 1,000. For those who had more than 24 treatments, the figure is 2.05 and for more than 36 treatments, the figure is 1.13. Tysabri is infused once every four weeks.

However, Weiss noted that for the 75,000 MS patients who have either taken Tysabri or are still on it, the risk of developing PML is 1 in 1,000, the same risk seen in the treatment’s clinical trials.

Biogen and Elan pulled Tysabri from the market in 2005 over PML concerns. However, natalizumab returned to the market in 2006 with a risk management program, including a restricted distribution program ([WDL, June 12, 2006](#)).

— Jonathan Block

## Dey Settles With Feds for \$280 Million Over Drug Pricing

Mylan subsidiary Dey Pharma has agreed to pay the U.S. government \$280 million to settle False Claims Act allegations involving illegal drug pricing, the Justice Department said Dec. 20.

The company was accused of reporting false and inflated prices for drugs used in federal healthcare programs such as Medicaid and Medicare.

The settlement resolves a whistle-blower case in which Ven-A-Care, a Florida pharmacy, accused Dey and other drugmakers of inflating prices. Dey allegedly reported false prices for albuterol sulfate, albuterol MDI, cromolyn sodium and ipratropium bromide.

(See [Dey, Page 10](#))

**Dey, from Page 9**

As part of the settlement, Ven-A-Care whistleblowers will receive \$67.2 million. Merck KGaA will actually pay the \$280 million as the lawsuit was filed prior to Mylan's 2007 acquisition of Dey from Merck KGaA. Also, the settlement does not constitute an admission of wrongdoing by Dey, Mylan says.

Ven-A-Care filed its complaint in the mid-1990s, but the government took a decade to preserve evidence relevant to the litigation. Following this delay, in 2009, Dey asked a federal court to find the Justice Department failed to preserve evidence relevant to the drugmaker's defense in a lawsuit, asking for appropriate fees and costs (*WDL*, June 22, 2009).

The Dey settlement is the fourth False Claims Act case settled in December. It follows settlements in which Roxane Laboratories, Abbott Laboratories and B. Braun Medical agreed to pay the government a combined \$421.2 million to resolve pricing allegations (*WDL*, Dec. 13, 2010).

"When a company reports falsely inflated prices for the purpose of increasing its sales and profits, it undermines the integrity of our health care system. Drug companies must understand that they risk substantial liability if they report false drug pricing information," said U.S. Attorney Carmen Ortiz of the District of Massachusetts.

The Justice Department has used the False Claims Act to recover more than \$5.3 billion since 2009. — Molly Cohen

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## House Democrats to Renew Global Drug Safety Bill

A group of Democratic congressmen led by Rep. John Dingell (Mich.) and Henry Waxman (Calif.) plan to reintroduce the Drug Safety Enhancement Act in the next Congress.

The bill would create a global registry of all manufacturing facilities that produce drugs to be sold in the U.S. and give the FDA the power to enforce mandatory recalls. — David Belian

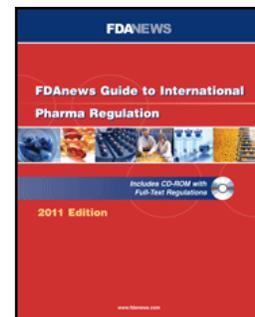
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## U.S. Supreme Court Could Take Up Prescription Data Marketing

The issue of whether states can restrict the sale of prescriber information data for use by pharmaceutical companies to detail drugs could come before the U.S. Supreme Court.

Vermont Attorney General William Sorrell asked the high court to grant cert on Dec. 13.

The issue stems from a split between two federal appellate courts which came to different conclusions regarding state prescriber laws.

In November, the U.S. Court of Appeals for the Second Circuit found a Vermont law restricting access to physician prescribing data unconstitutional (*WDL*, Dec. 6, 2010).

Meanwhile, in 2008, the U.S. Court of Appeals for the First Circuit upheld a New Hampshire state law that prohibits physicians' prescribing histories from being used to detail drugs (*WDL*, Nov. 24, 2008).

Noting the differing judgments, the petition asks the Supreme Court to discuss "whether a law that restricts access to information in nonpublic prescription drug records and affords prescribers the right to consent before their identifying information in prescription drug records is sold or used in marketing runs afoul of the First Amendment."

Citing the Second Circuit's decision, Sorrell says that "this case presents an ideal opportunity to address how the Court's precedents apply to restrictions on access to and commercial use of personal information."

Respondents in the case, including PhRMA and IMS Health, maintain that the laws only restrict the collection of prescriber information for the pharmaceutical industry and not for others, such as private insurers and state Medicaid programs.

In its amicus brief, PhRMA says, "while Section 17 [of Vermont's law] bars a pharmaceutical representative, based on prescriber-identifiable data,

from discussing a brand name drug with a doctor, the law permits a health insurer, with no less commercial motive and based on that same prescriber-identifiable data, to encourage the same doctor to prescribe generic drugs as part of the insurer's 'prescription drug formulary compliance.'"

The trade group adds that the prescriber data is needed to alert doctors when a company issues a "Dear Healthcare Provider" letter.

Likewise, IMS Health, Verispan and Source Healthcare Analytics released an amicus brief, which mirrors PhRMA's points and adds that gathering prescriber information is also used to alert healthcare providers if a certain drug is causing adverse events or if new risks are associated with it.

The petition for a writ of certiorari is available at [www.fdanews.com/ext/files/Pet10-779.pdf](http://www.fdanews.com/ext/files/Pet10-779.pdf).  
— Molly Cohen

## Rep. Issa Probes FDA on J&J's Recent Rolaid's Recall

Recent good manufacturing practice violations at Johnson & Johnson subsidiary McNeil Consumer Healthcare raise new questions about McNeil's relationship with contract manufacturers, Rep. Darrell Issa (R-Calif.), ranking member of the House Committee on Oversight and Government Reform, says in a Dec. 17 letter to the FDA.

Issa notes that a recent recall of Rolaid's identified the potential source of metal and wood particles in the product to be third-party manufacturer Best Sweet (*WDL*, Dec. 20, 2010). His letter requests specifics about the FDA's knowledge of Best Sweet's contractual relationship with J&J and whether the agency is acting appropriately to find any other safety concerns with products manufactured by Best Sweet.

Issa also requests a copy of any document identifying Best Sweet as the third-party manufacturer, and any inspection reports or warning letters issued on the company by the FDA.

— April Hollis

**GMP**, from Page 1

can result from the breakdown of a chemical that is sometimes applied to wood used in pallets for transporting and storing product packaging materials.

These events prompted the agency to give guidance recommending that manufacturers and distributors work to prevent the use of wood products treated with the preservative.

But J&J's troubles did not end with TBA. After several recalls of drugs manufactured at its Fort Washington, Pa., plant, the facility was shutdown last year and is expected to reopen in mid-2011 (*WDL*, Aug. 23, 2010). J&J subsidiary McNeil Consumer Healthcare is undertaking a comprehensive action plan to address manufacturing issues after recalls of many of its popular OTC drugs, as well as a controversial "phantom recall" of Motrin that drew the attention of Congress (*WDL*, Oct. 4, 2010).

That issue, along with GMP problems at several other companies, led a House committee to question the FDA's ability to oversee drugmakers' Puerto Rico facilities and request information on the agency's oversight capability (*WDL*, Nov. 15, 2010).

Reps. Edolphus Towns (D-N.Y.) and Darrell Issa (R-Calif.), chairman and ranking member, respectively, of the House Oversight and Government Reform Committee, requested information on the FDA's Puerto Rico district office and an update on the agency's investigation into McNeil's so-called "silent" Motrin recall and the actions of FDA employees.

Issa also raised concerns last year with the FDA's relationship with and regulation of

contract drug manufacturers, noting in a December letter to FDA Commissioner Margaret Hamburg that a J&J recall of Roloids identified the potential source of metal and wood particles in the product to be a third-party manufacturer.

Although FDA inspections of foreign plants have increased in recent years, they still pale in comparison to the level of inspections made on U.S.-based manufacturing facilities, the Government Accountability Office found in October (*WDL*, Nov. 1, 2010).

The FDA is also working on a revision to GMP regulations that would require pharmaceutical companies to audit raw material suppliers (*WDL*, Nov. 15, 2010).

Although J&J experienced problems with several of these issues, they weren't the only company to have troubles in 2010. Genzyme, for example, continued to see ramifications from viral contamination at its Allston, Mass., manufacturing plant.

The company signed a consent decree last year requiring it to complete a remediation plan, followed by five years of oversight and annual reports by a third-party consultant (*WDL*, May 31, 2010). Genzyme expects the plan — which would include milestones for bringing the plant into compliance — to be completed in two to three years. The decree also includes a disgorgement of \$175 million from past profits.

Genzyme has completed the move of its U.S.-product fill/finish operations from Allston as required under an FDA consent decree. Fill/finish activities for products sold outside of the U.S. must be moved by Aug. 31, 2011. — April Hollis

**FDANEWS**

**Customer Service:** Kim Williams  
(888) 838-5578 • +1 (703) 538-7600  
customerservice@fdanews.com

**Editor:** Jonathan Block  
(703) 538-7660  
jblock@fdanews.com

**Ad Sales:** Matt Salt  
(703) 538-7642  
msalt@fdanews.com

**Content Sales:** Alka Desai  
(703) 538-7669  
adesai@fdanews.com

300 N. Washington St., Suite 200 • Falls Church, VA 22046-3431 • Phone: (888) 838-5578 • +1 (703) 538-7600 • Fax: +1 (703) 538-7676  
[www.fdanews.com](http://www.fdanews.com)

**Reporters:** David Belian, April Hollis, Virgil Dickson, Wilson Peden, Molly Cohen

**President:** Cynthia Carter; **Editorial Director:** Pamela Taulbee; **Executive Editor:** Jonathan Block

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