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STATE AND CONSUMERS AFFAIRS AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
ARNOLD SCHWARZENEGGER, GOVERNOR

ENFORCEMENT COMMITTEE MEETING

Workgroup on E-Pedigree
June 20, 2006

Radisson Hotel Sacramento
500 Leisure Lane
Sacramento, CA 95815

Present: William Powers, Chair and Board President
Stan Goldenberg, R.Ph.and Board Member

Staff: Patricia Harris, Executive Officer
Virginia Herold, Assistant Executive Officer
Robert Ratcliff, Supervising Inspector
Judi Nurse, Supervising Inspector
Joan Coyne, Supervising Inspector
Board of Pharmacy Inspectors
Joshua Room, Liaison Counsel, Deputy Attorney General
LaVonne Powell, Staff Counsel

Call to Order

Chair William Powers called to the meeting to order at 9:30 a.m.

Presentation of Prescription Error Data

Executive Officer Patricia Harris reported that last year, Senator Speier sponsored Senate Concurrent Resolution (SCR) 49, which passed. SCR 49 created a panel to study the causes of medication errors and recommend changes in the health care system that would reduce errors associated with the delivery of prescription and over-the-counter medication to consumers.

On May 19th, she spoke to the panel about the board's quality assurance program and a summary of pharmacy laws that are used to prevent prescription errors such as patient consultation, medication profiles, and drug therapy review.

On June 2nd, she gave a second presentation on prescription error complaints and the board's citation and fine program. Ms. Harris provided data from 1999 through June 1, 2006. She gave this same presentation to the committee. She also provided examples of prescription error cases

and the amount of fines that were issued as a result. This same information will be published in the board's newsletter.

New Federal Requirements Regarding the Sale of Pseudoephedrine and Ephedrine-Containing Products

Supervising Inspector Robert Ratcliff reported that in March, Congress passed new requirements for the sale of all (single and multi-ingredient) pseudoephedrine and ephedrine-containing products. The new law (Public Law 109-177) places ephedrine, pseudoephedrine (PSE) and phenylpropanolamine in a new Controlled Substances Act (CSA) category of "scheduled listed chemical products." Drug products containing these ingredients are subject to sales restrictions, storage and record keeping requirements. Some of these requirements, which apply to all sellers of these products, went to effect April 8th, and the other requirements will go into effect by September 30, 2006. The Drug Enforcement Administration (DEA) is currently drafting regulations to implement provisions of the new law.

Review of Strategic Plan – Enforcement Goal and Strategic Objectives/Activities for 2006-2011

Assistant Executive Officer Virginia Herold reported that at its April meeting, the board updated its strategic plan. However, several key tasks remain to finalize the new plan, which will be reviewed by the board at the July meeting. To finalize the new plan, the Enforcement Committee reviewed and updated its segment of the strategic plan.

The Enforcement Committee reviewed each of the 12 strategic issues for content and relevancy to the enforcement goal and each objective for relevancy under each strategic issue.

The committee recommended that the board approve the committee's strategic plan.

Workgroup on E-Pedigree

Presentation by the Federal Food and Drug Administration (FDA)

Ilisa Bernstein, PharmD, JD, Director of Pharmacy Affairs, Office of the Commissioner and William McConagha, Esquire, Associate General Counsel, Office of the General Counsel presented via telephone recent actions by the FDA regarding the implementation of the regulations related to the Prescription Drug Marketing Act of 1987 (PDMA).

Dr. Bernstein explained that the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992, amended sections 301, 303, 503, and 801 of the Federal Food, Drug and Cosmetic Act (Act) to establish the requirements related to the wholesale distribution of prescription drugs. A primary purpose of the PDMA was to increase the safeguards to prevent the introduction and retail sale of substandard, ineffective, and counterfeit drugs in the U.S. drug supply chain.

Section 503(e)(1)(A) of the Act establishes the pedigree requirement for prescription drugs. A drug pedigree is a statement of origin that identifies each prior sale, purchase, or trade of a drug, including the date of those transactions and the names and addresses of all parties to them. Under the pedigree requirement, each person engaged in the wholesale distribution of a prescription drug in interstate commerce, which is not the manufacturer or an authorized distributor of record for that drug, must provide to the person who receives the drug a pedigree for the drug. The PDMA states that an authorized distributor of record is a wholesaler that has an "ongoing relationship" with a manufacturer to distribute that manufacturer's drug. However, the PDMA does not define "ongoing relationship."

In 1999, the FDA published the final regulations implementing the PDMA. The regulations were to take effect in December 2000. After publication of the 1999 final rule, the agency received comments objecting to some of the provisions. The regulations defined "ongoing relationship" to include a written agreement between a manufacturer and wholesaler. The regulation specified the fields of information to be included in the drug pedigree and states that this information must be traceable back to the first sale by the manufacturer. Based on concerns raised by various stakeholders, the agency delayed the effective date of these regulations several times.

In February 2004, the FDA delayed the effective date of these regulatory provisions until December 1, 2006, in part because the stakeholders in the U.S. drug supply chain informed the FDA that the industry would voluntarily implement electronic track and trace technology in 2007. If widely adopted, this technology would create a electronic pedigree that would document the sale of a drug product from the place of manufacture through the U.S. drug supply chain to the final dispenser and if properly implemented would meet the requirements of the PDMA regulation. FDA noted that although progress had been made, the use of electronic pedigree would not be widely adopted by 2007. As a result, in June 2006, the FDA announced that it did not intend to delay the effective date of the regulations beyond December 1, 2006. Therefore, the provisions defining an "ongoing relationship" and setting forth the pedigree requirements will go into effect.

FDA has issued a Compliance Policy Guide for public comment that would focus FDA's pedigree-related enforcement effort on those prescription drugs most vulnerable to counterfeiting and diversion. Several of the factors included examples. The examples are included only for illustrative purposes and are not meant to be inclusive of all drugs that meet these factors. FDA stated that it may, under appropriate circumstances, initiate regulatory action, including criminal prosecution, for pedigree violations that involve drugs that do not meet the factors.

Dr. Bernstein stated that the enforcement priorities reflect a phased–in approach to the enforcement of the stayed pedigree provisions. FDA contends that by providing guidance on the types of drugs that are of greatest concern, wholesale distributors will have a better idea of where and how to focus their initial energies as they implement systems to come into compliance. The policy guide will expire one year from the issue date of the final document.

Consistent with their risk-based approach to regulation of prescription drugs, FDA identified factors that would give a higher priority to enforcement efforts regarding the pedigree

requirements. The risk-based focus for prescription drugs is high value in US market, prior history of counterfeiting or diversion and significant impact on the patient's health, reasonable probability for new drugs, and other violations of law by the wholesale distributor.

Dr. Bernstein explained that the FDA Counterfeit Drug Task Force also recommended that stakeholders continue to expeditiously implement widespread use of e-pedigree across the drug supply chain and that the FDA would provide technical assistance if legislation related to e-pedigree is considered in Congress. It is desired that stakeholders continue moving forward in implementing RFID across the drug chain. It is the Task Force's position that RFID is the most promising technology and recommended that stakeholders should consider a phased–in approach, placing RFID tags on products most vulnerable to counterfeiting and diversion as a first step. FDA remains committed to facilitating RFID implementation and working with stakeholders, standards organizations and others to do this. It is desired that the FDA work quickly to complete its RFID Impact Study examining drugs and biologics, and publicly share the results. Importantly RFID tracking could be useful for expeditious deployment and re-deployment of medical countermeasures in times of crisis.

It is the Task Force's recommendation that the pedigree would be to the individual drug product package which would require mass serialization and that the NDC number should continue to be closely associated with the product, and for non-line-of-sight technology, such as RFID, the unique identifier for the product should either include an encrypted NDC number or an accessible link to the NDC number to protect privacy. Ideally there should be one numbering schedule in the drug supply chain. To implement a universal and nationally uniform pedigree would require that the PDMA be amended by Congress.

The Task Force did not have a preference whether a distributed or central database is used to track the pedigree; as long as every entity in the chain of custody for the prescription drug has access to the information about that drug all the way back to the manufacturer. It is important the information be secure and it is more efficient to let the market and technology dictate how best to capture and access the date in electronic pedigrees. However, it is essential for FDA and every entity in a drug product's chain of custody to have access to the product pedigree data.

Further the Task Force recommended that the FDA work with manufacturers and other stakeholders in their efforts to develop appropriate messages, symbols, or statements for labeling of drug products and packaging that contains an RFID tag and to work with the private and public sector to educate consumers about RFID. The Task Force did not have sufficient time to review the issue of "turning off" the RFID tag to assure a patient's privacy.

In conclusion, Dr. Bernstein acknowledged and commended the California Board of Pharmacy in its effort to implement an electronic pedigree for prescription drugs. For a secure supply chain, FDA contends that it is imperative that there be transparency and accountability. The widespread adoption of electronic track and trace holds tremendous promise in securing the U.S. supply chain and the lifting of the stay of the PDMA regulations will provide a more effective enforcement of the law. Further, stakeholders (manufacturers, wholesalers, pharmacies, states and the Federal government) must remain vigilant in their responsibility to deliver safe and effective drugs to patients.

Presentation by the California Pedigree Working Group

The California Pedigree Working Group (CPWG), which is comprised of five trade associations representing all sectors of the pharmaceutical supply chain submitted its comments to support its request to extend the implementation date of the electronic pedigree. It was noted that more than 70 representatives – from over 22 manufacturers, six distributors, nine trade associations, seven pharmacy chains and providers met twice to develop a unified position regarding the electronic pedigree requirements and focused on ensuring that solutions put in place do not limit or otherwise impede patient access to authentic products.

The five trade associations are BIO, which represents more than 1,100 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and 31 other nations. GPhA, which is the Generic Pharmaceutical Association representing manufacturers and distributors of finished generic pharmaceutical products, manufacturers and distributors of bulk active pharmaceutical chemicals and suppliers of other goods and services to the generic pharmaceutical industry. The HDMA, Health Distribution Management Association, represents wholesalers nationwide. The National Association of Chain Drug Stores (NACDS) represents over 35,000 retail chain pharmacies and suppliers, and employing over 108,000 pharmacists. The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the pharmaceutical and biotechnology companies.

The CPWG noted that over the past three years, individual manufacturers, distributors, and dispensers have taken significant steps to prevent counterfeits from entering the domestic distribution channels, including: adopting a counterfeit reporting practice with the FDA that ensures rapid response to discovery of counterfeits in the supply chain, working closely with law enforcement to aggressively investigate and prosecute counterfeiters, buy-direct requirements in contracts between manufactures and authorized distributors of record, adopting anti-counterfeiting security features, and working actively to develop reliable track and trace systems.

The members of the CPWG stated that there are substantial issues that make the adoption of any electronic pedigree system impossible by January 1, 2007. They contend that neither the industry nor the technologies are capable of complying with board's goals at this time. They are concerned that the risk of implementation at this early developmental stage in pedigree technology and processes is institutionalizing an immature remedy that is insufficient to repel counterfeiting and other attacks on the pharmaceutical distribution system. Such immature remedies may lead to supply chain disruption.

The working group explained that an extension of the electronic pedigree implementation date would provide the opportunity to continue to develop effective, interoperable solutions for California that will enhance security throughout the supply chain. It would allow time to develop a compliance model based on reasonable and unified steps and to create a non-disruptive and more effective electronic pedigree system. This time would also allow the industry to more carefully and thoroughly introduce major changes within the supply chain that the statutory mandates require.

The CPWG provided the following reasons to extend the implementation date: (1) no uniform standards in place for a drug pedigree (2) the supply chain lacks alignment in critical areas that it needs to resolve such as technology, processes, data security, resource availability, and agreement on the channels through which products should flow (3) a lack of consistency among states and federal requirements – California's pedigree requirements are unprecedented and unparalleled to other states and the federal requirements.

The CPWG identified realistic, short-term milestones that the industry agreed to continue working on in order to progress toward compliance:

- Develop Standards – The first step is to establish standards for product identification, data sets, ownership, and sharing, and interoperability. It is anticipated that the electronic pedigree messaging standards will be adopted by mid-November. Once adopted, it is anticipated that testing will begin around March 2007.
- Support Technologies – While some guidelines for exchanging product information have been developed for use between manufacturers and distributors, this transaction is not a pedigree document. However, it may contain information to assist in the creation of a pedigree. How the new and existing capabilities can be linked needs to be explored.
- Support Education – The CPWG will work to develop education vehicles for preparing its various members for compliance by sharing best practices.

The CPWG stated that it would continue to pilot approaches to define best practices for implementing and managing electronic pedigree solutions. Once there is interoperable software, the supply chain can begin to pilot and validate these systems for use. As an interim step to assure a safe supply chain, it was recommended that the board adopt the "primary distribution channel regulatory" model. This would be in addition to the use by pharmaceutical companies of a variety of counterfeit-resistant technologies on drug packaging and labeling.

In conclusion, the CPWG stated that is working together to ensure that consumers continue to have confidence in their pharmacies and pharmacists, and the prescription drugs dispensed, while ensuring that have unimpeded access to products they need. The anti-counterfeiting guidance should be considered as standards are developed and adopted, new distribution processes are developed, and various technologies become more mature. It is their request that an extension of the electronic pedigree implementation date will provide the opportunity to develop an effective, interoperable solution for California that will enhance security throughout the supply chain, develop a compliance model based on reasonable and unified steps and to create a non-disruptive and more effective electronic pedigree system, and introduce major changes within the supply chain that the statutory mandates require.

Letter from the California Pharmacists Association and California Society of Health-System Pharmacists

These two organizations representing pharmacists provided a letter in support of an electronic pedigree to assure a secure drug supply in the United States and commended the board with its efforts in addressing such an important safety issue. However, they cautioned the board that there are serious hurdles that must be overcome before such a system can be put in place. Therefore, they requested that the implementation date be extended substantially beyond 2007 to allow time

to work in concert with the federal government in implementation of the Prescription Drug Marketing Act (PDMA) of 1987.

It is their position that the extension should be coupled with adoption of a single standard, interoperability, sightless reading, ease of use and reasonable cost. The additional time will also allow for resolution of other questions, such as the application of the pedigree requirement to the transfer of drugs not addressed in current law (samples, "recycled" drugs) as well as other issues that periodically surface as the electronic pedigree system is developed. They concluded their letter by advising the Board of Pharmacy that forging ahead with electronic pedigree implementation too quickly will result in substantial, and perhaps disastrous disruptions of the current drug distribution system resulting in unintentional harm or delay of medication to the patient.

Discussion

The Enforcement Committee discussed the various concerns. They expressed disappointment that the California Pedigree Working Group failed to provide actual milestones for implementation. One milestone provided was the testing of the pedigree messaging standards. EPCglobal reported that it anticipates the adoption of these standards by mid-November 14 and the CPWG proposed to test the standards around March 2007. While repeated concern was raised that technology was not available to implement an electronic pedigree, the committee commented that they have heard from many that the technology is available now for implementation of the requirements in 2007.

The committee again expressed its intent that an electronic pedigree is implemented and that they wanted to see actual milestones that will reflect efforts to reach compliance.