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*Producers of Quality
Nonprescription Medicines and
Dietary Supplements for Self-Care*

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CONSUMER HEALTHCARE PRODUCTS ASSOCIATION

Formerly Nonprescription Drug Manufacturers Association

CHPA Presentations at
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OTC Part 15 Hearing
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Over-the-Counter Medications: A Success Story

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Scientific/Regulatory Perspective on Rx-to-OTC Switch

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Over-the-Counter Medications: A Success Story

Michael D. Maves, MD, MBA
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June 28, 2000

Good morning, my name is Dr. Michael Maves and I am the President of the Consumer Healthcare Products Association, headquartered in Washington, DC, and a practicing otolaryngologist at the Georgetown University Medical Center. I want to thank the Food and Drug Administration for allowing CHPA to share our views on the questions and issues compiled in the Federal Register announcement of this meeting. CHPA intends to file comprehensive comments on these issues by the comment deadline.

Consumer Healthcare Products Association

- 119-year-old association
- 200 members -- 90% retail sales
- Active partner with FDA and consumers:
 - OTC drug development
 - Labeling
 - Manufacturing
 - Packaging

CHPA is the 119-year-old trade organization representing the manufacturers and distributors of nonprescription medicines and dietary supplements. The Consumer Healthcare Products Association has over 200 members across the manufacturing, distribution, research, testing, advertising and supply sectors of the self-care industry. CHPA members represent over 90% of retail sales in the OTC marketplace. We have worked collaboratively with consumers and the Food and Drug Administration over the years on all aspects of OTC drug development, labeling, manufacturing and packaging.

OTC Perspective

Consumers Are Interested in Their Own Healthcare:

- Explosion of information on Internet
- Wellness movement among population
- 60% adults follow news stories about health
 - More than business
 - More than sports

We talk about an OTC perspective within the OTC industry. This perspective, which must be shared by all concerned parties, recognizes the forces behind the self-care movement and captures the impetus for the development of new OTC products. I want to spend some time reviewing the elements of this perspective.

As I am sure you are aware, consumers are extremely interested in their own healthcare. Evidence for this can be found in the explosion of health information that is available on the Internet as well as the thriving wellness movement among the population. This is particularly true of the baby-boomer generation who are determined not to go gently into middle age! Sixty percent of adults follow news stories about health – more than those who follow business or even sports!¹

¹Prevention Magazine survey, 1999

OTC Perspective

Self-Care Applies to a Wide Range of Conditions/Diseases:

- Acute conditions without a prior diagnosis:
 - Analgesics -- headache
 - Dermatological products -- rash
 - Gastrointestinal products -- heartburn
- Acute recurrent conditions with an initial diagnosis:
 - Antifungals -- vaginal yeast infection
- Disease prevention strategies:
 - Sunscreen -- skin cancer
 - Fluoride/Triclosan -- dental caries/gingivitis
- Adjunctive treatment with life-style changes
 - Nicotine replacement therapy -- smoking cessation

Self-care with OTCs spans a broad range of conditions and diseases ranging from acute conditions such as analgesics for the treatment of headaches to the periodic use of GI products for heartburn. Some recurrent conditions will require an initial physician diagnosis, but can be very safely managed with OTC medication such as the antifungals for the treatment of recurrent vaginal yeast infections. Chronic disease prevention strategies will involve the use of sunscreens to prevent cutaneous solar damage and the development of skin cancer or the use of fluoride and triclosan for the prevention of caries and gingivitis. Finally, adjunctive treatment with OTC medications, coupled with life-style changes can make a real difference to patients who are attempting to quit smoking.

OTC Perspective Scientific/Regulatory Paradigm

Reasonable expectation of benefit:

- Specific target populations
- Readily recognizable conditions, previously diagnosed conditions, or self-diagnosable diseases
- Medications at the appropriate dosage and with comprehensible labeling
- Low potential for toxicity

The potential for further self-care empowerment of consumers is based upon a scientific paradigm which defines specific target populations, with readily recognizable conditions, previously diagnosed conditions, or self-diagnosable diseases, and determining which drugs at the appropriate dosage and with appropriate labeling can provide a reasonable expectation of benefit with a low potential for toxicity.

OTC Switch Successes!

- Over 80 ingredients, dosages forms and strengths
- 700 marketed products
- Examples
 - Nicotine replacement therapy
 - Fluoride/Triclosan
 - Antifungals
 - Analgesics
 - Cough/cold remedies

This type of perspective has provided the consumer with a wide variety of products and truly some remarkable success stories for all of us. Over 80 ingredients, dosage forms and strengths have been switched from Rx status or introduced as new OTC drugs since the start of the OTC Review in 1972, accounting for over 700 marketed products. I spoke about some examples earlier in the context of where self-care takes place. Several categories are listed again here.

FDA Question:

Can prevention claims promote ill-advised behavior?

CHPA Answer:

- Not specific to OTC products
- If this does happen, what is the public health risk/benefit to consumers
- Case-by-case analysis with specific data

I would like to now address three aspects of FDA questions. My colleagues, Ms. Bachrach and Dr. Soller, will provide commentary on other aspects of FDA's questions.

FDA asks whether prevention claims can promote ill-advised behavior.

Let's step back. How patients and consumers behave rests with them irrespective of our best intentions. This is not unique or limited to OTC products. The more relevant questions are if this does happen, to what extent does it occur and how would OTC availability provide a similar or greater public health benefit to consumers than prescription alternatives. Again, we would feel that such an inquiry is best answered on a case-specific basis with data.

FDA Question:

What about the availability of a "better" OTC product in terms of efficacy or safety should affect the status of products already on the OTC market for treatment of the same condition?

CHPA Answer:

- Individual response, preference, or compliance with treatment
- Medical policy backs wide armamentarium of options
- Consumers should have same choice

FDA asks also about how the availability of a "better" OTC product would affect the status of products already on the OTC market for treatment of the same condition.

It's well known that individuals – consumers, patients and physicians – vary in their responses and preferences for different treatments. This can lead to individual differences in compliance that may further vary the response to treatment. Therefore, the definition of "better" is not easily defined for this purpose. For that matter, on the Rx side, medical practice welcomes a wide armamentarium where many "older" drugs play a critical role. Consumers should have this same choice. Ms. Bachrach will amplify on this point in her comments.



Eve E. Bachrach

Senior Vice President, General
Counsel and Secretary
Consumer Healthcare Products
Association

June 28, 2000

I am Eve Bachrach, Senior Vice President, General Counsel and Secretary of the Consumer Healthcare Products Association. CHPA believes that FDA should continue to foster a regulatory environment under which consumers have greater access to safe and effective medicines that can be appropriately used and labeled for self-care. By following well-established legal principles, this public health goal can be met. We are pleased that the agency has provided this open forum to discuss important questions about the regulation of OTC drugs because we have concerns with some of the questions FDA has raised in its hearing notice.

FDA Questions:

Should FDA propose OTC switches without drug company support?

Should FDA be more active in initiating switches?

CHPA Answer:

In public interest for NDA company to initiate switches

- Most comprehensive knowledge about drug
- In best position to design, conduct, analyze studies
- Switches without NDA company could be inappropriate
 - Metaproterenol

FDA asks if it should propose OTC marketing “in the absence of support from the drug sponsor” and, more generally, if FDA should be “more active in initiating switches.”

Today, virtually every switch is accomplished through the new drug approval (NDA) process. This makes public health sense. The company that developed the drug in the first place and obtained the NDA for the Rx drug knows the most about the drug. The company also is in the best position to design and perform the studies necessary to establish whether a drug can be adequately labeled for OTC use and, where necessary, to establish that the drug is safe and effective for the proposed OTC indication and dose.

Where FDA believes that a drug should be considered for OTC use, the agency should consult with the company about this. However, the suggestion that FDA might switch a drug without the company’s active participation, or worse, over its opposition, could lead to the switch of drugs that should remain prescription, based on full knowledge about their properties, including emerging data.

**Switch without company consent
requires due process, protection
of data**

- FDA notice and hearing
- Proprietary NDA data

If a switch were undertaken without consent of the NDA company, the Act requires that due process be followed. The “Rx legend” is part of the approved NDA. To remove it over the objection of the company, FDA would have to follow notice and hearing requirements.

Neither the “switch regulation” procedure under section 503(b)(3) of the Act nor OTC Review rulemaking could be substituted for statutory hearing rights. In any event, the switch regulation procedure is an anachronism in today’s environment, because it only provides for removal of the Rx legend, not for development of the extensive data and labeling needed to support OTC use, which is critical to effective consumer self-care.

FDA Questions:

Should the "best" drug in a class be switched 1st?
Should older OTCs be taken off market when "better"
ones are introduced?

CHPA Answer:

- Consumers benefit from broadest choice of drugs
- "Best" and "better" are relative
- Drug comparison is for the consumer

FDA asks about comparative assessments. Should the "best" prescription drug in a class be switched first? Should older OTC therapies be taken off the market after "better" ones are introduced?

Consumers benefit from the widest possible availability of drug products that are safe, effective, and properly labeled. Because of individual variability and preferences, what is "best" for one person may not be for another.

The process of comparing one drug to another is a decision for the consumer. FDA should not foreclose potentially useful options. It therefore would not be appropriate for FDA to refuse to switch a drug because it thought a "better" one might be coming along later, or for FDA to review existing marketed products with an eye toward removing older ones from the market.

Drugs Should Be Evaluated on Their Individual Merits

- Criteria for FDA withdrawal
- "Better" drugs not a criterion

Once approved, a product can only be withdrawn based on a finding that it is no longer safe or effective. The availability of "better" drugs is not a criterion for withdrawal.

When genuine safety or effectiveness issues are presented with a marketed product, industry has a long history of working cooperatively with FDA in the public interest, through labeling changes and, where appropriate, by taking products off the market. It would be an enormous waste of resources for FDA to institute a comparative review of marketed products across-the-board, with no promise of any benefit to consumers.

It is good public health policy for consumers to have access both to new switch drugs and to older drugs that may be appropriate choices. For that reason, there is nothing in the statute that permits the FDA to make the sort of comparative assessments contemplated by the questions in the hearing notice.

Thus, brand name line extensions are beneficial to the healthcare system, by contributing to the growth and vitality of the OTC armamentarium. We also believe that any attempt by FDA to restrict brand name line extensions generally would violate the First Amendment protection for truthful and nonmisleading commercial speech, and would violate the property rights of manufacturers in their trade names. FDA precedent also makes trade name restrictions a matter of last resort. We will be providing an extensive written analysis of the legal issues following the hearing.

in the U.S. system.” On the contrary, GAO remarked that “the evidence that does exist tends to undermine the contention that major benefits are being obtained in countries with a pharmacist or pharmacy only class.”

Since 1974 FDA has repeatedly rejected a third class of nonprescription medicines on the grounds that a public health benefit has not been demonstrated. Both the agency and the Department of Justice have acknowledged that FDA lacks statutory authority to establish any such class.

In short, the U.S. system of unrestricted OTC drug distribution works and other countries are starting to follow America’s lead.



Scientific/Regulatory Perspective on Rx-to-OTC Switch

R. William Soller, Ph.D.
Senior Vice President and
Director of Science & Technology
Consumer Healthcare Products Association
June 28-29, 2000

My name is Dr. Bill Soller, Senior Vice President and Director of Science & Technology.

I have been involved in the OTC industry and switch for over twenty years, including consultation with CHPA members on many of the switches undertaken over that time.

Switch Criteria

- **FDA Question:**
 - What criteria should the agency use for switch?
- **Answer: The current statutory and regulatory criteria**

Question: FDA asks: What criteria should the agency use for switch? [We interpret switch criteria to mean standards for making the benefit/risk decision for OTC availability.]

Answer: Switch criteria should be the current statutory and regulatory criteria that have been the basis for the many successful switches undertaken since the start of the OTC Review.

(See Soller, R.W.: OTCness. DIA Journal 32 555-560, 1997.)

Fulfillment of Regulatory Switch Criteria

- **Disciplines of toxicology, clinical pharmacology and epidemiology, well-equipped to address:**
 - **Potential safety issues**
 - **Toxicity**
 - Carcinogenicity, reproductive toxicity, side effects
 - **Therapeutic hazards**
 - Misdiagnosis -- self-selection, self-diagnosis
 - Treatment failure -- delayed professional treatment
 - Incorrect use -- long-term self-monitoring, overdose, misuse
 - Drug interactions
 - **Potential effectiveness issues, based on nature/severity of condition**
 - Choice of dose, dose interval, age restrictions, etc.
 - **Ability of label to convey core communication objectives**
 - **Benefit/risk assessment**

These regulatory criteria are fulfilled through the application of the basic principles of toxicology, clinical pharmacology and epidemiology, using the standard scientific/regulatory paradigm, which is the case-by-case, weight-of-the-evidence, data-driven, dialogue-driven approach we use as scientists to determine drug availability.

Specifically, companies are well-equipped to address the sorts of potential issues that typically arise in the context of OTC availability. Companies consider:

Potential safety issues, with respect to:

- Potential toxicity, which are often already worked out for the switch candidate in the Rx drug's New Drug Application.
- Potential therapeutic hazards, including issues associated with misdiagnosis, potential treatment failure, incorrect use, and drug interactions.

Switch Process

- **Case-specific**
- **Substantial data development**
- **Best developed through company-initiated approach**

Because the switch process is case-specific, it often requires substantial data development. This is best developed through a company-initiated approach that includes early and frequent dialogue with the agency during the OTC R&D process.

Consumer Understanding

- **FDA Question:**
 - How can FDA be assured of consumer understanding of the benefits and risks of specific drug products and the ability of consumers to use products safely and effectively were the drug products to be marketed OTC?
- **Answer:**
 - Use the established switch process and the consumer behavioral study designs to address case-specific switch questions.
- **Need:**
 - An ongoing dialogue.

On the subject of consumer understanding, FDA asks:

How can it be assured of consumer understanding of the benefits and risks of specific OTC drug products and the ability of consumers to use OTC products safely and effectively.

FDA can continue to gain assurance by using the established switch process and the consumer behavioral research studies that have been refined in the last decade to address case-specific switch questions.

Consumer behavioral research includes attitudinal and comprehension as well as observational research. Examples include:

- Actual use studies
- Label comprehension studies
- Research defining potential OTC target populations;
- Research on educational programs, materials that form part of the labeling of the switch candidate.

Any and all of these studies can be essential to the OTC benefit/risk decision. FDA's question suggests a need for further dialogue on this matter, and we ask for this today.

Summary

- Switch has been successful, providing benefits to consumers.
- FDA must use the statutory switch criterion.
 - Continue to use the established regulatory definitions
 - Practice the scientific/regulatory paradigm
 - Review drugs on an individual basis
 - Avoid presumptive negative category/ingredient lists
- CHPA seeks additional dialogue on switch.
- Switch should remain company-initiated.
- GAO finds no benefit for third class.
- Collaborative approach needed for the future!

In summary to our remarks:

- The switch process has been very successful in providing significant therapeutic benefits to consumers.
- FDA must use the statutory criterion for switch, should continue to use the regulatory definitions of safety, effectiveness, and labeling, practice the scientific/regulatory paradigm, review drugs on an individual basis, and avoid presumptive negative lists.
- We seek additional dialogue on consumer behavioral research.
- Switch should be initiated by the NDA company who has the most knowledge about the drug.
- A third class of drugs has been thoroughly reviewed and rejected for over a century on the grounds that no public health benefit has been shown.
- Most important, we should seek collaborative, not confrontational, approaches for the company-agency dialogue that is vital to creating a thorough, yet reasonable, OTC R&D program to test future switch proposals.

6/27/00