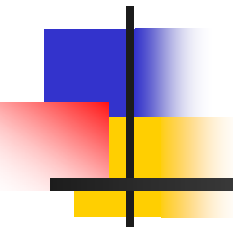


# Counterfeit Drugs: Serious Threat or Ploy?

Issue Introduction & Overview



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# Definition: Federal Food Drug & Cosmetic Act

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- The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor. 21 U.S.C. 321 (g)(2)



# Definition: World Health Organization (1992)

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- A counterfeit medicine is one which is deliberately and fraudulently mislabeled with respect to identity and/or source.
- Counterfeiting can apply to both branded and generic products and
- Counterfeit products may include products with correct ingredients or with wrong ingredients, without active ingredients, with insufficient ingredient or with fake packaging.



# Counterfeiting & Importation

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- Often, but not always, related to one another



# Access

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- Almost 4 billion outpatient prescriptions are dispensed annually in the U.S.
- More chronic illness requiring chronic medications
- Over 43 million US residents under 65 lack health coverage



# Perceived Price Differentials

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- Driving much of the reimportation activity
- Many drugs can be purchased from Canada at 40 percent less than in the US (Time Magazine February 2, 2004)



# HHS Report on Prescription Drug Importation (December 2004)

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- Selected Key Findings
  - Our current system of drug regulation has been very effective in the past but is facing new threats. It should be modified only with great care to ensure high safety and effectiveness standards
  - There are significant risks in the way individuals are currently importing drugs
  - Personal importation would be costly and difficult to implement in a way that ensures safety and effectiveness
  - **Liability concerns are raised for consumers, manufacturers, distributors, pharmacies, and other entities**



# Extent of Importation into the U.S.

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- Almost 5 million shipments of drugs entered the U.S. from Canada in 2003 via Internet sales and travel to Canada
  - This represents about 12 million prescriptions and a value of about \$700 million
- FDA estimates that an equivalent amount of prescriptions is coming from the rest of the world



# Personal Use Exemption Current Policy

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- FDA personnel will use their discretion to decide on a case by case basis whether to detain, refuse or allow entry of the product.



# Personal Use Exemption

## Current Policy

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- If intended use is unapproved & for a serious condition for which effective treatment may not be available domestically
- If there is no known commercialization or promotion to persons in the US by those involved in distributing the product
- If the product is considered not to represent an unreasonable risk



# FDA's Import Blitz Examinations Summer 2003

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- International Mail Facilities in Miami, New York, San Francisco and Carson Calif.
- FDA & CBP examined 1,153 drug packages
- 88 percent were deemed violative
- 85 percent of those were unapproved drugs



# FDA's Import Blitz Examinations

## November 2003

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- International Mail Facilities in Buffalo, Dallas, Chicago and Seattle
- FDA & CBP examined 1,927 drug packages
- 85 percent were deemed violative
- 69 percent of those were unapproved drugs



# Extent of Counterfeit Drug Problem

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- WHO estimates that the worldwide sales of counterfeit drugs are \$32 billion annually
- FDA has received different figures describing the global counterfeit problem and does not report an estimate for the United States
- FDA estimates that in some countries the counterfeit rate is around 10% (South East Asia), but as high as 40% in other countries (Mexico, Colombia, Argentina)



# FDA Counterfeit Drug Cases Opened

Year	No. of Cases Opened
1997	9
2001	21
2004	58
2005	32
2006	54
2007	31



# FDA's "Combating Counterfeit Drugs" Report (2004) Recommendations

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- Implementation of new technologies to better protect our drug supply
- Adoption of electronic track and trace technology to accomplish and surpass the goals of the Prescription Drug Marketing Act
- Adoption and enforcement of strong, proven anti-counterfeiting laws and regulations by the states
- Increased criminal penalties to deter counterfeiting and more adequately punish those convicted
- Adoption of secure business practices by all participants in the drug supply chain



# FDA's "Combating Counterfeit Drugs" Report (2004) Recommendations

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- **Development of a system that helps ensure effective reporting of counterfeit drugs to the agency and that strengthens FDA's rapid response to such reports**
- **Education of consumers and health professionals about the risks of counterfeit drugs and how to protect against these risks**
- **Collaboration with foreign stakeholders to develop strategies to deter and detect counterfeit drugs globally**



# World Health Organization

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- International Medical Products Counterfeiting Task Force (IMPACT) 2006
  - Brought together all the major counterfeiting bodies including international organizations, nongovernmental organizations, drug regulatory authorities, enforcement authorities, manufacturer associations, wholesalers, health professionals and patients.
- In 2008 recognized the problem as being multifaceted, much of which is the result of ineffective administration and ineffective collaboration between authorities and countries.



# The Prescription Drug Marketing Act (PDMA) Addresses Importation & Counterfeiting

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- Allows for reimportation by only the manufacturer (or if approved by HHS Secretary in emergency situations)
- Requires state licensing of wholesale distributors of prescription drugs



# (Some) Secondary Wholesalers & the Counterfeiting Problem

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- The FDA and others have identified (some) secondary wholesalers as the conduit for introduction of counterfeit medications into the legitimate supply chain.
- Clearly only some secondary wholesalers may be involved but even some is too many



## Secondary “Unauthorized” Wholesale Distributors & Risk of Counterfeits

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- Approximately 6,000 registered wholesale distributors in the U.S.
  - Many are unauthorized (not illegal to be unauthorized)



# Authorized Distributor

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- The PDMA defines an authorized distributor of record as a wholesaler that has an “ongoing relationship” with the manufacturer to distribute the drug.



# Ongoing Relationship

## 21 CFR §203.3(u)

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- Manufacturer and distributor enter into a written agreement
  - Distribute manufacturer's products for a period of time or a number of shipments, or
  - Distribute only certain specific products of that manufacturer



# Sources of Counterfeit Products Introduced into the Market

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- Buying them from patients outside Medicaid clinics and sold as new later.
- Stolen drugs (e.g. hijacked trucks, break-ins at warehouses, etc)
- Buying them directly from drug counterfeiters



## Secondary “Unauthorized” Wholesale Distributors & Risk of Counterfeits

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- Movement to seek change in certification process
  - Background checks by states
  - NABP’s Verified Accredited Wholesale Distributors Program (VAWD)
    - 289 as of 10-23-08 (Source: NABP Website)
- Stricter documentation on origin of drugs



# Distributor Licensing & Pedigree Requirement by State (as of 9-12-08)

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■ No Legislation or regulation	14
■ Enacted legislation; rules pending	11
■ Proposed legislation	7
■ Final Rules adopted	10
■ Rules pending; no legislation	1
■ Enacted legislation	7

Source: [http://www.healthcaredistribution.org/gov\\_affairs/.state/state\\_legis-static.asp](http://www.healthcaredistribution.org/gov_affairs/.state/state_legis-static.asp)



# Pedigree

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- 1992 Prescription Drug Amendment (to the PDMA)
- Verification of the origin and path of sale
- Requires unauthorized wholesale distributors to provide purchasers a statement identifying each prior sale of the drug



# Radiofrequency Identification Technology (RFID)

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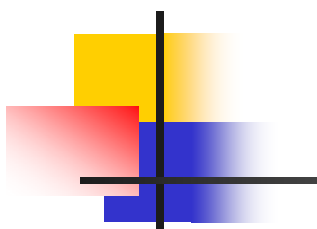
- In November 2004 FDA announced a new initiative to protect the drug supply using RFID – a type of electronic pedigree
  - As part of this initiative, FDA published a Compliance Policy Guide (CPG) for implementing RFID pilot programs and feasibility studies
  - FDA also created an internal RFID workgroup to monitor, identify, and solve issues related to RFID



# Pedigree

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- FDA issued final regulation in 1999
- FDA issued several delays and finally stayed implementation until April 1, 2004
- FDA Counterfeiting Task Force:  
recommended continued stay after April 1, 2004
- 2006: FDA announced it is moving forward on this



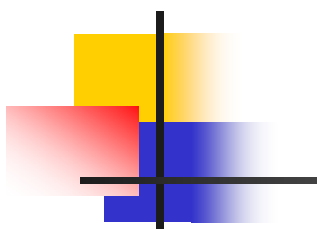
# FDA's New Plan for Pedigrees

## Factor 1

### High Value in the U.S. Market

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- High sales volume or price?
  - e.g. Lipitor, Nexium, Risperidal, Plavix
- High priced/specialty product for serious or life threatening diseases?
  - E.g. Procrit, Epovir, Combivir, immune globulin (IGIV), Gamimune, Gammagard, Epogen, Serostim



# Factor 1 (continued)

## High Value in the U.S. Market

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- Is the drug in high Demand?
  - e.g. Oxycontin
  
- Is there a shortage of the drug?
  - e.g. certain metered dose inhalers



## Factor 2

### Prior Indicators

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- Are there prior cases of the drug being counterfeited or diverted in the U.S.? Is there a history of false pedigrees associated with the product?
  - e.g. Viagra, Procrit, Zyprexa, Serostim, Tamiflu, Combivir, Epovir, Sustiva, Trizivir, Zerit, Diflucan, Lamisil



## Factor 3

### Reasonable Probability (for new drugs)

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- Is there a reasonable probability that the drug may be counterfeited or diverted based on Factors 1 and 2?
  - e.g. priority review status?
- Based on products in a similar class, is the drug predicted to have a high potential market size and value?

# RxUSA Wholesale, Inc. v FDA

467 F.Supp. 2d 285 (2006)

2008 U.S. App. LEXIS 14662

- RxUSA obtained a preliminary injunction to prevent FDA from implementing pedigrees
  - Federal Rule requires wholesale distributors who are not authorized to provide pedigrees
  - Rule does not require authorized distributors to obtain pedigrees
  - Therefore impossible for unauthorized distributors to comply with the rule as written



# RxUSA Wholesale, Inc. v FDA

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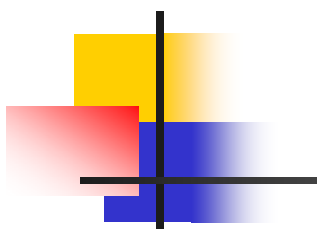
- For now, FDA will not initiate enforcement action solely for
  - Failing to include lot numbers, dosage, container size or number of containers on a pedigree (already required information in usual transactions); or
  - Failing to provide a pedigree that goes back to the manufacturer as long as it otherwise identifies the last authorized distributor of record that handled the drugs



# The Pharmaceutical Access and Drug Safety Act of 2007 (S. 242/H.R.380)

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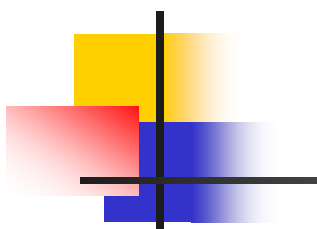
- Would permit purchase of Rx meds by mail from registered Canadian pharmacies for personal use.
- Would allow licensed U.S. pharmacies and wholesalers to import wholesale medications from several designated countries in bulk.
- In committee



# Counterfeit Drug Prevention Act of 2007 (HR 780)

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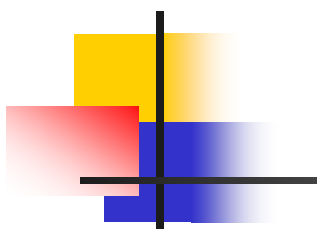
- Amends the Federal Food, Drug, and Cosmetic Act to establish criminal penalties of a fine and imprisonment for not more than 20 years, or both, for any person who commits a prohibited act relating to counterfeiting knowing that: (1) the conduct concerns the rendering of a drug as a counterfeit drug; (2) the conduct will cause a drug to be a counterfeit drug; or (3) a drug, held, sold, or dispensed is a counterfeit drug.



# Counterfeit Drug Prevention Act of 2007 (HR 780)

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- Increases the term of imprisonment to any term of years or for life if the use of a counterfeit drug is the proximate cause of a consumer's death.
- In committee



# Safeguarding America's Pharmaceuticals Act of 2008 (HR 5839)

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- Requires destruction of imported counterfeit drugs
- Requires manufacturer to provide to each wholesale distributor or dispenser a packing list or other document that includes information identifying proprietary & established names and NDC.



# Safeguarding America's Pharmaceuticals Act of 2008 (HR 5839)

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- Requires each person in the wholesale distribution of a RX drug to provide information in each prior transaction
- Requires HHS secretary to report to Congress on feasibility of adopting security technologies including track & trace technology....



# Safeguarding America's Pharmaceuticals Act of 2008 (HR 5839)

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- Requires HHS secretary to issue regulations to establish effective drug ID and tracking system.....
- Requires Secretary to study threats to the domestic Rx drug supply chain and make recommendations for improvement
- The bill is still in Committee