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# Congress, Illinois Think Canada Is Answer to Prescription Drug Woes

*Katherine Licup*

An elderly woman cried when she discovered a prescription for tomoxifen, a drug she used to treat breast cancer, cost \$45 at the Rx Depot in Tulsa, Oklahoma.<sup>1</sup>

She was not upset; she was overjoyed.

Rx Depot owner Carl Moore said that the same prescription at a local pharmacy cost the woman \$390. The customer had stopped taking the drug a year earlier because she could not afford it.

Rx Depot is able to sell drugs cheaper than other local pharmacies because the medicine is reimported - exported to Canada and then shipped back to the United States. Moore has opened 80-plus stores that cater to people who cannot ordinarily afford to pay for their prescriptions.

There is just one problem: Moore's business is illegal. While the United States currently allows individuals to get a 90-day supply of medication from Canada, only pharmaceutical companies are authorized to reimport drugs. An Oklahoma state court recently ordered Moore to cease operating his stores in that state. The Department of Justice is seeking to halt his operations in 22 other states in a federal trial beginning this fall.<sup>2</sup>

Americans who live in northern states have long been aware that the same drugs available in their local pharmacies cost much less in Canada, and have crossed the border to purchase them. Now entrepreneurs like

Moore, as well as Congress and some state governments, are seeking to reimport drugs on a massive level.

According to the language in the proposed Pharmaceutical Market Access Act of 2003, Americans pay up to 1,000% more for prescription drugs than foreign consumers do.<sup>3</sup> The Congressional Budget Office predicts that in the next 10 years American seniors will spend \$1.8 trillion on pharmaceuticals.

**"While American companies manufacture most of the world's drug supply, they sell drugs abroad at a fraction of the price Americans pay.... Americans end up paying higher prices to recoup the enormous costs of pharmaceutical research, development and marketing."**

"One quarter of senior citizens have no prescription drug insurance, and many seniors have only limited coverage," said Rep. Rahm Emanuel (D-Ill.), one of the bill's co-sponsors. "A recent study showed that about 30% of seniors do not fill at least some of their prescriptions because of cost."

While American companies manufacture most of the world's drug supply, they sell drugs abroad at a fraction of the price Americans pay, primarily due to foreign government price controls.<sup>4</sup> Americans end up paying higher prices to recoup the enormous costs of pharmaceutical research, development, and marketing.

The proposed federal legislation would authorize the Secretary of Health and Human Services to institute regulations to allow reimportation of FDA-approved drugs, but with protections in place to combat counterfeit, unregulated, and dangerous drugs.

State and local governments are proposing similar measures. Illinois Gov. Rod Blagojevich commissioned a study in September to determine the feasibility of providing reimported drugs to state employees and retirees.<sup>5</sup> He has even established a Web site where people can sign a petition calling for the legalization of reimportation.<sup>6</sup> Springfield, Massachusetts, and the AARP have initiated programs that utilize reimported drugs in their prescription plans.

The Food and Drug Administration and opponents of reimportation counter that this legislation would endanger the drug supply. During an "import blitz" this summer, the FDA and U.S. Customs examined packages expected to contain pre-

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scription drugs from foreign countries, 16% of which were Canadian. While many packages appeared to contain FDA-approved drugs, 88% violated some FDA provision. For instance, the drugs were different than those approved in the United States, had inadequate labeling, had been removed from the market, or were inadequately packaged.<sup>7</sup>

The Illinois Policy Institute has raised concerns that terrorists might take advantage of weaknesses in the supply chain to taint the drug supply. As the import blitz illustrated, U.S. Customs and the FDA do not have the manpower to examine all the drugs coming into the country; the burden of ensuring a safe drug supply would be enormous.<sup>8</sup> Moreover, free-market experts predict that pharmaceutical companies may stop selling large quantities overseas, limiting the amount of drugs that could be reimported, and that reduced revenue from American consumers could stunt research and development.

Emanuel disagrees, claiming that the passage of the bill would create the kind of competition that would balance out prices worldwide. Additionally, the bill would actually improve the safety of imported drugs through the use of inexpensive counterfeit-resistant technology. Finally, because the pharmaceutical industry receives so many tax breaks, taxpayers already generate sufficient revenue to maintain research and development, he said.

While reimportation is generally seen only as a short-term solution to rising drug costs, Emanuel believes that even if a prescription-drug benefit is passed this year, seniors will still be left with significant out-of-pocket costs. The cost-savings of reimported drugs could help, and the support from seniors is evident.

"We have received calls and letters from seniors around this coun-

try thanking us for fighting for this issue," Emanuel said.

1. Alex Markels, *A Prescription for Controversy*, U.S. News & World Report, Oct. 6, 2003, at 50.
2. Rx Depot franchises are located in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Iowa, Illinois, Indiana, Kansas, Massachusetts, Missouri, Montana, North Carolina, Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina, Texas and Wisconsin, available at <http://www.rxdepot.com/liststore.php> (last accessed Oct. 15, 2003).
3. H.R. 2427, 108th Cong. (2003), available at <http://thomas.loc.gov>.
4. Edward H. Crane & Roger Pilon, *Conservative Drug Split: Reimportation is right and good*, National Review Online, July 29, 2003, at [http://www.nationalreview.com/script/print-](http://www.nationalreview.com/script/print-page.asp?ref=/comment/comment-crane-pilon072903.asp)

- page.asp?ref=/comment/comment-crane-pilon072903.asp
5. Press Release, Office of the Governor, *Governor Directs Special Advocates to Report on Possible Cost Savings of Allowing State Health Plans to Reimburse Patients for Reimported Rx Drugs* (Sept. 15, 2003), available at <http://www.illinois.gov/PressReleases/PrintPressRelease.cfm?SubjectID=3&RecNum=2272>
6. Petition, available at <http://www.affordable-drugs.il.gov/>
7. Press Release, *FDA, FDA/U.S. Customs Import Blitz Exams Reveal Hundreds of Potentially Dangerous Imported Drug Shipments* (Sept. 29, 2003), available at <http://www.fda.gov/bbs/topics/NEWS/2003/NEW00948.html>.
8. Policy Brief 03-04, *Illinois Policy Institute, Does the Blagojevich Prescription Drug Reimportation Proposal Threaten Public Safety, Fund Terrorism?* (Sept. 30, 2003), available at <http://www.illinoispolicyinstitute.org/PB%2003%20-%2004%20Reimportation.htm>.

## Supreme Court Weighs Rehabilitating Against Rule-Breaking Under the ADA

Mary E. O'Malley

The Supreme Court is balancing the rights of employers to create company policy against an individual's right to work. On October 8, 2003, the Court heard oral arguments in *Raytheon v. Hernandez* to resolve whether a record of past drug abuse qualifies for protection under the American with Disabilities Act ("ADA").<sup>1</sup> Raytheon seeks to protect the integrity of its company policy while Joel Hernandez claims Raytheon's policy discriminated against him as a prior drug abuser.

In 1991, Hernandez was given a drug test at his place of employment and tested positive for cocaine.<sup>2</sup> At the time of the test, he worked on government defense missiles as a Calibration Service Technician for Hughes Missile Systems Company ("Hughes"), a government defense contractor and

subsidiary of Raytheon Company. Hernandez also had prior alcohol problems coupled with excessive absenteeism. In light of the positive cocaine test, Hernandez exercised an option to resign in lieu of termination.

Over two years later in January 1994, Hernandez applied for rehire by Hughes as a Product Test Specialist, a position in which Hernandez had prior experience. Hernandez supplied Hughes with two letters of recommendation: one from his pastor and the other from his sponsor in Alcoholics Anonymous, which stated Hernandez's progress in substance recovery. Hughes rejected the application after its Labor Relations Department found that his Employee Separation Summary reflected that Hernandez resigned in lieu of termination due to prior