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CONSUMER NEWS

Pharmaceutical Industry Faces Prescription for Change as High Drug Prices Call Consumers to Action

Kathryn Smetana

I. Introduction

The rising costs of prescription drugs are attributable to any number of factors depending upon which side of the prescription you are on. Consumers and health care providers see major pharmaceutical companies engaging in rampant profiteering, while drug manufacturers claim high research and development costs as justification for high purchase prices. On the attack, pharmacies, generic drug manufacturers, and health care providers have engaged anti-trust laws as a means to promote less expensive alternatives for consumers. The drug companies view changes to the system as leading to dwindling care and stagnating research. While legislators seek a meaningful compromise, consumers are looking over the border and online for lower prices.

II. Do We Get What We Pay For?

Americans spend more on prescription drugs per person than any other nation in the world.¹ It is estimated that in 2001, total spending on prescription drugs will be \$165 billion, or \$575 for the average American.² Drug spending doubles every five years and rises three times faster than overall health care spending.³ However, this increase in spending does not correspond to a proportional increase in better health for patients.⁴

Commonly-Prescribed Drugs	Average U.S. Price	Average European Price
Allegra 120	\$69.99	\$20.88
Atarax	\$28.62	\$4.20
Biaxin 250	\$113.25	\$61.74
Claritin	\$63.06	\$16.05
Coumadin	\$37.74	\$8.22
Glucophage	\$30.12	\$4.11
Lipitor	\$52.86	\$41.25
Premarin	\$17.10	\$9.90
Prozac	\$71.94	\$44.10
Zestril 5	\$25.92	\$5.52
Zithromax 500	\$486.00	\$176.19
Zyrtec	\$50.10	\$17.73

Source: Life Extension Network

Medication	U.S. Local Pharmacy	Canada	Mexico	Italy*	France*	England*	U.S. On-Line Pharmacy	Savings: On-Line vs. Local U.S. **
Zocor 5mg (60)	113.97	46.17	67.65	58.14	65.12	73.52	89.70	24.27
PriLOSEC 20mg (30)	122.62	55.10	32.10	62.56	70.06	79.09	101.21	21.41
Zoloft 50mg (100)	238.44	129.05	219.35	121.65	136.25	153.83	196.70	41.74
Procardia XL 30mg (100)	144.89	74.25	76.60	73.92	82.79	93.47	113.09	31.80
Norvasc 5mg (90)	127.17	89.91	99.32	64.88	72.66	82.04	102.49	24.68
Synthroid 1mg (100)	30.37	10.53	15.88	15.54	17.41	19.65	22.82	7.55
Micronase 1.25mg (100)	38.99	11.63	9.48	19.89	22.28	25.15	21.29	17.70
Cardura 4mg (100)	113.29	66.97	N.A.	57.80	64.73	73.09	90.70	22.59
Pravachol 40mg (30)	120.99	50.03	N.A.	61.72	69.13	78.05	98.95	22.04
Celebrex 100mg (100)	143.29	48.59	N.A.	73.10	81.88	92.44	124.44	18.85

* The prices for these countries were extrapolated from figures given in "Prescription Drug Pricing... An International Price Comparison" prepared for the U.S. House of Representatives on August 27, 1999. They are not exact, but should be considered close approximations of actual costs.

** The savings found in on-line pharmacies are listed drug by drug. In total, they represent a saving of more than 19%. Even greater savings could be realized through the prudent use of generics and dosage melding (purchasing double-strength dosages and splitting the pills... with your doctor's approval.)

III. Why Do We Pay More?

According to a recent BlueCross BlueShield white paper, unreasonable drug costs are the result of unconscionable industry profits.⁵ To illustrate, pharmaceutical industry profit margins range between 19-24%, while other large industries have profit margins of only 3-5%.⁶

Pharmaceutical Research and Manufacturers of America (PhRMA), a brand drug industry trade association, defends the profitability of the drug industry.⁷ PhRMA produces a brochure for consumers supporting

the high prescription drug prices.⁸ They claim that the high costs to consumers are necessary to generate enough revenue to fund research and development costs.⁹ PhRMA also admonishes consumers against purchasing cheaper alternatives in other countries and of supporting potential government instituted price controls.¹⁰

PhRMA explains that high drug prices are the inevitable result of necessary, though high priced, research and development.¹¹ They state that bringing one new medicine to the market costs \$500 million, and takes 12-15 years of testing.¹² Additionally, only 3 out of 10 drugs available to Americans generate enough revenue to meet or exceed research and development costs.¹³

PhRMA stands by its estimated cost of \$500 million for each new drug brought to market, to the point of fighting a nine year court battle that brought it to the United States Supreme Court just to keep the General Accounting Office from seeing its Research and Development financial records.¹⁴

PhRMA also argues that instituting price controls is not viable because "price controls have been tried numerous times over the past 4,000 years but have never worked."¹⁵ PhRMA cites the potential for investors to take their money elsewhere, and even resorts to scare tactics to ward off price controls.¹⁶ Alan Holmer, President of PhRMA, stated, "if we impose price controls . . . it's going to harm my kids and it's going to harm those millions of Americans who have life-threatening conditions."¹⁷ According to PhRMA, keeping the strong free market in pharmaceutical drugs is necessary for innovation and better health, while challenging the system will naturally result in halting health care progress.¹⁸

However, the prescription drug industry fails to mention that it spends more on direct consumer advertising and promotion for new drugs than it spends funding research and development of the drugs.¹⁹ The result is that new drugs with heavy advertising can cost significantly more than their comparable predecessors.²⁰

In some instances, these new drugs are actually less effective than their older counterparts.²¹ At the same time, PhRMA admits that pharmaceutical companies put only one out of every five dollars of revenue into research and development.²²

Furthermore, PhRMA fails to mention that over 75% of the drugs brought to market are not innovative, nor do they provide important therapeutic gains, rather these drugs, often called “me-too” drugs, provide no benefit over already existing products, and generally have research and development costs significantly lower than actual innovative drugs.²³ Conspicuously absent from PhRMA’s statements is any evidence of realizable consumer value, or any effort to compromise for those consumers unable to bear the cost of their innovative, thoroughly researched prescription medication.

IV. Reactions to High Prices

The increase in prices of commonly prescribed medications has affected such a wide population that response is inevitable. Various groups, from drug manufacturers to medical professionals to congressmen and consumers have challenged high priced medications in ways unique to the resources available to each.

A. Court Cases – Anti-Trust Violations

On June 6, 2000, the United States District Court for the Eastern District of Michigan, Southern Division, in *In re Cardizem CD Antitrust Litigation*, entered partial summary judgment in favor of plaintiffs alleging violations of anti-trust laws against defendant pharmaceutical companies HMRI and Andrx for entering into an agreement that restrained generic competition in the market for Cardizem CD, a widely prescribed heart medication.²⁴ The court found that HMRI and Andrx agreed to restrain Andrx from marketing a generic ver-

sion of Cardizem CD, which inhibited generic competition throughout the life of the agreement, effectively allowing HMRI to fix the price of the drug at non-competitive levels.²⁵ To keep Andrx from marketing a generic Cardizem CD, HMRI agreed to pay Andrx \$10 million per quarter.²⁶ The court stated that this agreement was “a straight forward horizontal market allocation agreement [that] fits within the category of business practices which have long been held illegal *per se* under section 1 of the Sherman Act.”²⁷

Similarly, in December 2000, the United States District Court for the Southern District of Florida, Southern Division, in *In re Terazosin Hydrochloride Antitrust Litigation* granted summary judgment to plaintiffs against defendant drug manufacturers for engaging in an agreement to fix the price of a drug used to treat hypertension and enlarged prostates.²⁸ In this instance, Abbott Laboratories contracted with Zenith and Geneva Pharmaceuticals such that Zenith agreed to accept \$6 million per quarter, and Geneva \$4.5 million per month, to refrain from marketing generic equivalents of Terazosin Hydrochloride.²⁹ These agreements were found to be “classic examples” of *per se* violations of anti-trust laws.³⁰

Most recently, in August 2001, the New York City Patrolmen’s Benevolent Association (“PBA”) President, Patrick J. Lynch, filed four federal class-action suits in four states charging nine pharmaceutical companies with violations of anti-trust laws by entering into agreements to keep cheaper generic drugs off the market, alleging costs to consumers in the multi-million dollar range.³¹ Alleging that the anti-trust violations primarily affect the elderly, breast cancer victims, and those suffering from hypertension, angina and anxiety, Lynch commented that the agreements made between drug companies force consumers “to pay artificially high prices for very important, common medications.”³² Of the suits filed, one in West Virginia alleges that Pfizer entered into an agreement with Mylan Labs to extend Pfizer’s monopoly in

the market for Procardia XL 30, a drug prescribed for hypertension and angina, while staving off entry in the market of generic alternatives.³³ As a result of this agreement, the complaint alleges that there was no true generic alternative available until at least February 6, 2001, which meant there was no choice but to pay inflated prices until that time.³⁴ Suits filed in the Eastern District of New York and in Newark allege manufacturers of the most widely prescribed breast cancer drug, and of the fourth most prescribed drug for the elderly, respectively, cooperated to hold prices at an artificially high level, while blocking a cheaper generic alternative from entering the market.³⁵ Finally, a suit filed in the District of Columbia alleges that Bristol-Myers Squibb extended its monopoly on a common anti-anxiety drug by falsifying patent information.³⁶

B. Medical Professionals Offer Suggestions

Medical professionals have provided congressional testimony to support alternatives to the high costs associated with prescription medication.³⁷ To balance the competing interests of the pharmaceutical companies and consumers, federal subsidies appear a viable option that would not only lower direct cost to consumers, but also ensure profits to the drug industry.³⁸ Additional suggestions include cutting the growing marketing budgets of the large brand name companies, providing cost to efficacy estimates for medications to physicians and patients to determine what medications are worth the cost, and to establish reasonable ceilings on profits.³⁹

C. Congressmen Propose Legislation

Members of Congress have endeavored against high drug prices by introducing legislation calling for change as a means to garner some relief to constituents' pocketbooks. Among others, Vermont Congressman,

Bernie Sanders, introduced an amendment to the House calling for an end to the “outrageously” high cost of prescription medications, stating that Americans are “being ripped off.”⁴⁰ The amendment would require drug companies to market prescription drugs at “reasonable” prices.⁴¹

D. Consumers Take Action

While Congress considers new legislation, and courts settle legal disputes, consumers aren’t waiting around, instead they are getting their medications at the lowest price they are able to find them. In a recent survey, over 60% of Americans said they would drive to Canada to get their prescriptions at a lower price if they lived closer.⁴² The average price of brand name drugs in Canada run 62.5% of the price in the United States.⁴³ It is estimated that thousands of Americans near the Canadian border currently drive across to fill their prescriptions to take advantage of the lower prices.⁴⁴ Stories of busloads of seniors making regular treks across the border for prescription savings have become lore. If Americans had the ability to pay average Canadian prices for brand name drugs this year, the savings would total an estimated \$38.4 billion.⁴⁵

Consumers without the ability to travel over the border to get prescription medications at a lower cost have found the Internet an invaluable source of both information and medications. One consumer, 65 years old and uninsured, faced a \$6,000 annual prescription bill in America until he discovered the discounted prices in Canada.⁴⁶ He went on to found Medicine Express, a club connecting seniors with a doctor and pharmacy in Niagara Falls, Canada.⁴⁷ Another went as far as Sri Lanka for medication to treat his thyroid condition after he found himself uninsured and unable to pay American prices.⁴⁸ This same consumer has published an informational book detailing the process of purchasing medica-

tion abroad via email, which has sold nearly 3,000 copies to date.⁴⁹

A new online pharmacy slated to launch in January 2002, LePharmacy.com, out of Montreal, boasts the ability to offer American consumers prescription drugs at a savings of 40 – 70%.⁵⁰ Several Canadian based websites sell prescription medications at a cheaper price to Americans, and over the counter Canadian medications that require prescriptions to procure in America.⁵¹ Visiting websites is much lauded method of bypassing high prices in the States while also finding competitive pricing for necessary medications as well as lifestyle drugs like Viagra.

V. Conclusion

It is unclear what rules of conduct will be carved out for the drug industry by litigation and legislation, but major pharmaceutical companies standing to lose enormous profits solidly oppose changing the trend toward rising prices. PhRMA's senior director of policy, Tracy Baroni, dramatically predicts that if the government acted to lower prescription drug prices, "[t]he lights go out in the labs, and there is no R&D."⁵²

Rallying against artificially high prescription prices, seemingly diverse groups ranging from medical professionals, to Congress, as well as competing drug manufacturers have challenged the dominating pharmaceutical companies, with mixed result. The drug industry, reaping profits other industries can only hope to achieve, is not surprisingly, a stalwart foe. However, with skyrocketing prescription drug prices, consumers whose incomes cannot abide such increases will continue to seek the lowest prices outside the U.S. Some caution against purchasing medication from countries without the safety checks and standards of the FDA; that without FDA approval, consumers run the risk of not knowing what they're getting.⁵³ However, the consumer voice

overwhelms this concern – the savings are far more meaningful than the strictures of FDA process.

PhRMA insists on maintaining the free market system as a means to achieve innovation in health care for the future, but what the major pharmaceutical companies may not be willing to accept is that the free market system is a double-edged sword, for consumers will only pay so much for so long before cheaper options in other markets become the only answer to health care in the future.

Endnotes

1. *Prescription Drug Pricing: Hearing before the Senate Comm. on Commerce, Science and Transportation, 107th Cong.* (2001) [hereinafter *Hearings*] (testimony of Professor Alan Sager).

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3. *Id.*

4. Harry Austin, *Drug Prices Driving a Crisis*, CHATTANOOGA TIMES/CHATTANOOGA FREE PRESS, Sept. 9, 2001, at G4.

5. *Id.*

6. *Id.*

7. Arthur Levin, *High Cost of New Drug Development Exposed as Myth*, HEALTHFACTS, Aug. 1, 2001.

8. www.phrma.org/publications/publications/brochure/questions [hereinafter *PhRMA*] (last visited Oct. 17, 2001).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*
14. Levin, *supra* note 7.
15. *Id.*
16. *Id.*
17. *Id.*; Levin, *supra* note 7.
18. *PhRMA*, *supra* note 8.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. Levin, *supra* note 7.
24. *In re Cardizem CD Antitrust Litig.*, 105 F. Supp. 2d 682, 685 (E.D. Mich. 2000).
25. *Id.*
26. *Id.* at 701.
27. *Id.*
28. *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317, 2000 U.S. Dist. LEXIS 20477, at *3 (S.D. Fla. Dec. 13, 2000).
29. *In re Terazosin Hydrochloride Antitrust Litig.*, 2000 U.S. Dist. LEXIS 20477, at *16-17.
30. *In re Terazosin Hydrochloride Antitrust Litig.*, 2000 U.S. Dist. LEXIS 20477, at *26.
31. *NYC PBA Federal Class-Action Lawsuits Charging Pharmaceutical Companies With Illegally Inflating Prescription Drug Prices*, PR NEWswire, Aug. 21, 2001, Financial News.
32. *Id.*

33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Hearings, supra* note 1 (testimony of Prof. Alan Sager).
38. *Id.*
39. *Id.*
40. www.house.gov/bernie/press/2000/06-14-2000.html (last visited Oct. 17, 2001).
41. *Id.*
42. *Online Direct Acquires Exclusive Worldwide Distribution Rights for Online Pharmacy System – Will Enable Americans to Buy Prescription Drugs At Canadian Prices*, BUSINESS WIRE, Sept. 6, 2001, Healthwire.
43. *Id.*
44. *Id.*
45. *Hearings, supra* note 1 (testimony of Prof. Alan Sager).
46. Danielle Kost, *U.S. Residents Look Abroad for Medicine*, USA TODAY, Sept. 12, 2001, at 14B.
47. *Id.*
48. *Id.*
49. *Id.* The book, written by Michael McCormick, is entitled, *E-Pharmacy.MD*, and is sold on his web page at <http://www.medicines.md>.
50. *Online Direct Acquires Exclusive Worldwide Distribution Rights for Online Pharmacy System – Will Enable Americans to Buy Prescription Drugs At Canadian Prices*, BUSINESS WIRE, Sept. 6, 2001, Healthwire.

51. See <http://www.canadarx.net>; <http://www.canadadrugs.com>;
<http://www.allergy-medications.com>.

52. *Hearings*, *supra* note 1 (testimony of Prof. Alan Sager).

53. Kost, *supra* note 46.

