Consumer News
Currently, there is no law that requires a drug-dispensing Internet company to post information about itself, or the doctors and pharmacists it employs. Some web sites offer prescription drugs prescribed by a doctor who never sees the patient; others send out drugs without a prescription at all. These sites provide little or no information about their companies, their location and the individuals running them. A congressional subcommittee is concerned that this practice threatens the health and safety of consumers in the United States.

Peter Neupert, President and Chief Executive Officer of drugstore.com, was one of several witnesses who testified before the U.S. House of Representatives Subcommittee on Oversight and Investigation on July 30, 1999. Neupert stated that, “the number of consumers accessing the Internet for health and medical information has increased from 3.2 million in 1995 to 22.3 million in 1998.” Neupert also asserted that online pharmacies benefit consumers. The goal of Internet drugstores, Neupert explained, “is to empower consumers by permitting them to make more informed health-related purchases, while saving both time and money.” He went on to state that, “online pharmacies and drugstores offer an exciting prospect for increasing public health by providing more convenient and informative access to health products and information.”

Neupert also testified that drugstore.com complies with all applicable federal and state laws that regulate the distribution of prescription drugs and information over the Internet. drugstore.com also meets the legal requirements for licensing and registration of pharmacies, including registration as a non-resident pharmacy in those states that require such measures. Neupert testified that drugstore.com and its distributors also comply with all laws regarding “security, recordkeeping and reporting for pharmaceutical sales, as well as medical record confidentiality.”

Neupert also made clear that his company participates in and supports industry efforts at self-regulation. He reasoned that, “reliance on industry self-regulation by legitimate web sites results from the realization that the Internet does benefit consumers as long as they are provided with a means of making intelligent choices.”

William Rassouk, Chairman and Chief Executive Officer of PlanetRx.com, another one of the larger online...
drugstores, told the subcommittee that he also favored self-regulation. He testified that he would call a “summit” of online pharmacies to establish a “watchdog” system that would disclose illegitimate Internet drugstores suspected of distributing prescription drugs without the proper licenses or in violation of other state or federal laws.

However, there are several hundred online drugstores and what can look like a legitimate, law-abiding Internet pharmacy may, in fact, be illegitimate. The subcommittee also heard testimony from two investigative journalists. These reporters testified that they were able to order prescription drugs over the Internet with ease. One reporter testified that he was able to order Viagra, a drug that alleviates impotency, for his cat, Tom. The reporter filled out a questionnaire using the cat’s actual height and weight. The online pharmacy did not raise any questions and filled the prescription. In other instances, these reporters testified, they obtained Viagra for a ninety-eight year old man and a prescription diet drug for a seven year old girl. This is where the congressional subcommittee is concerned.

Janet Woodstock, director of the U.S. Food and Drug Administration’s Center for Drug Evaluation and Research, testified that “[t]he unauthorized sale of prescription and unapproved drugs poses a potential threat to the health and safety of consumers.” She added that, “consumers who are desperate for a cure to a serious medical problem are particularly vulnerable.” The FDA is especially concerned about those Internet drugstores that prescribe drugs to patients who complete an electronic questionnaire or who sell drugs without any physician approval.

In addition to the FDA, the regulation of prescription drugs and pharmacies also involves the Federal Trade Commission, the Department of Justice, and regulations enacted and enforced by the individual states. The congressional subcommittee also heard testimony from Jodie Bernstein, Director of the Bureau of Consumer Protection of the Federal Trade Commission. Bernstein explained that the FTC, “has conducted enforcement and consumer education initiatives to combat health fraud on the Internet... and is now monitoring online pharmacy websites, conducting investigations and making referrals to other federal and state authorities as appropriate.” Bernstein testified that issues regarding the appropriate standard for dispensing drugs is one of the FTC greatest concerns. The FTC also acknowledged that these issues have generally been controlled by the states. Bernstein recommended to the subcommittee that they consider, “whether additional legislative measures are necessary to address the unique characteristics of this medium and ensure greater protections for consumers.” Particularly, Bernstein suggested, “requirements for clear and prominent disclosure of identifying
information for the online prescribing physician, the online pharmacy and the website owner, if different, as well as the states where prescriptions will be dispensed."

Meanwhile the National Association of Boards of Pharmacy, which represents state pharmacy licensing officials, has proposed a resolution. That is, the association has developed its own “seal of approval” for online pharmacies. This certification program will indicate to consumers which online pharmacies are licensed in good standing with state pharmacy boards and other regulatory agencies.

House Passes Bill to Curb Internet Alcohol Sales

With a heavy-handed vote in the U.S. House of Representatives, the 21st Amendment Enforcement Act passed 310 to 112. See 106 H.R. 2031. The bill is aimed at stopping teenagers from ordering alcohol over the Internet.

The legislation would give state attorneys general broader powers to enforce state drinking age laws. Each state sets its own liquor laws and currently nineteen states prohibit out-of-state shipments of alcohol. The only recourse for state prosecutors is to go to their own state courts. Yet, this bill would allow state attorneys general to prosecute in federal court anyone out of state who sells alcohol to minors or violates any other state liquor law. The federal court could then issue a preliminary or permanent injunction against the distributor.

Representative Joe Scarborough (R-Fla.) sponsored the bill and asserted that wineries marketing on the Internet were acting like “modern day bootleggers.” Critics contended that the bill was designed to protect the monopoly of wholesale distributors and squeeze out the small wineries who market their products directly to consumers through the Internet.

Wholesalers lobbying for the bill initially garnered support from such groups as Mother Against Drunk Drivers (MADD) and the Emergency Nurses Association. However, as it became more apparent that the issue had more to do with competition within the liquor industry than with underage drinking, the two groups dropped their support for the bill. Additionally, only 23 state attorneys general endorsed the bill and it was opposed by the National Council of State Legislatures.

A similar version of this bill has already passed in the Senate.
General Motors Ordered to Pay $4.9 Billion on Faulty Fuel Tank Explosion

A Los Angeles jury awarded $107 million in compensatory damages to six people severely burned when their Chevrolet Malibu exploded into flames following a rear-end collision. Even more remarkable was the $4.8 billion in punitive damages the jury also ordered the auto maker to pay, making the award the largest product-liability judgment in U.S. history.

The plaintiffs claimed that GM put profits ahead of the safety of their car owners. Attorney Brian Panish argued that internal company documents illustrated that GM officials intentionally decided not to recall cars they suspected had problem gas tanks. He said an internal study conducted in 1973 by GM engineer, E.C. Ivey, revealed that it would have cost $8.59 to modify each car’s gas tank to eliminate the safety concerns; but it would only have cost about $2.20 per car for potential legal settlements. Panish also said that GM was aware of the potential problems this study could have created if it ever became public. See Michael White, GM Ordered to Pay $4.9b in Burn Case, BOSTON GLOBE, July 10, 1999, A1.

GM denied responsibility for the accident and instead pointed the finger at the drunk driver who caused the collision. According to GM spokesman, Terry Rhadigan, the Malibu’s fuel system was safe and the crash occurred when the Malibu was struck from behind by a drunk driver going 70 miles per hour. See id. GM attorney, Richard Shapiro, argued that GM did nothing wrong and they will appeal the verdict. He claimed that the jury did not properly weigh exculpatory evidence presented by GM and the judge improperly barred additional evidence favorable to GM. For instance, GM was not allowed to introduce evidence about the other driver and the fact that he was driving while under the influence of alcohol; nor was GM allowed to introduce favorable crash test results of the Malibu. See Rick Orlov and Beth Baret, $4.9 Billion Verdict! Jury Orders GM to Pay Damages to Burn Victims, DAILY NEWS OF LOS ANGELES, July 10, 1999, N1.

The plaintiff’s argued that the gas tank and not a drunk driver was the issue in this case. The tanks were mounted 11 inches from the rear bumper in the Chevrolet Malibu and El Camino, the Oldsmobile Cutlass and Pontiac Grand Am from 1979 to 1983. See Michael White, GM Ordered to Pay $4.9b in Burn Case, BOSTON GLOBE, July 10, 1999, A1. Better designs would have made the cars safer; GM knew this and chose to leave the gas tanks where they were according to Panish. See id.

GM has stated that they will
appeal the decision. A verdict in a similar 1977 Ford Pinto case was eventually reduced by a judge from $125 million to $3.5 million.