

# CHICAGO LAWYER

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## CLIFFORD'S NOTES

**B**avencio, a new cancer drug approved earlier this year by the U.S. Food and Drug Administration, costs about \$156,000 a year per patient.

Late last year, a new muscular dystrophy drug was approved that costs about \$300,000 a year per patient.

And a new bladder cancer treatment called Tecentriq costs \$150,000 a year per patient.

And who can forget the national public relations disaster of the makers of the EpiPen, a life-saving medication that has seen a price hike of 500 percent since 2007. The public outcry led to a lower-cost generic variation to hit the market more quickly.

All that while, CEOs of pharmaceutical companies are able to earn record salaries — some more than \$35 million yearly. And annual earnings of some of the top companies like Johnson & Johnson, Amgen, Pfizer and Roche Holding are more than 25 percent, while the average S&P 500 company profit margin for 2016 was 10.4 percent.

With more than 18,000 approved prescription drugs available in the U.S. and pharmaceutical companies having the ability to make a profit when nearly half the population reports using at least one drug in the past 30 days, what is causing the drug price crisis?

One answer is certain — the pharmaceutical industry and its lobbyists have made baseless arguments in blaming lawsuits for the high cost of medications. Certainly, research into new therapies for serious illnesses is a necessity. This research can help so many sick people to live longer, healthier lives. But it is no coincidence that there is little research work going to develop medicines like antibiotics because the illnesses they treat clear up in 10 days or so.

Pharmaceutical companies are focusing on long-term treatments for conditions like Alzheimer's, hepatitis and cancers. Price gougings are especially noticeable in niche markets, where a certain population requires the drug and it isn't affordable for a number of companies to be competing against each other for a finite number of buyers, like \$750 a pill for Daraprim, the only approved treatment for a rare, life-threatening parasitic infection. The cost of a prescription drug in the U.S. is basically what the market will bear.

At least one would think that drugs would be safe, but it has been reported by researchers at the Yale School of Medicine that nearly a third of prescription drugs approved from 2001 to 2010 had major safety issues after these medications were made widely available to the public as companies rush to be the first on the market with groundbreaking medications.

And once they secure the patent, the corporations do everything they can to extend their monopoly beyond the roughly 12-year expiration date with slight variations or extended release formulations.

Of the 222 drugs approved in the first decade of the millennium, 71 required a "black box" warn-



## THE \$750 PILL

How Big Pharma, not Big Law, is behind skyrocketing drug costs

By **BOB CLIFFORD**

ing on the side effects or warranted a safety announcement about new risks, according to a study report in the *Journal of the American Medical Association* in May. The *JAMA* article reported that the majority of the FDA's pivotal trials in drug approvals involved fewer than 1,000 patients and lasted six months or less, yet it took a median of 4.2 years for these safety concerns to come to light after the drugs were approved. This is a severe health care crisis that needs to be addressed.

Certainly, companies are allowed to make profits in a capitalist society. However, one of the greatest purchasers of prescription drugs, Medicare, is blocked by law from negotiating prescription drug prices. Oddly, though, the Veterans Health Administration is able to negotiate drug prices and, as a result, the VHA pays 80 percent less for brand names drugs under Medicare Part D, according to a 2015 report by Carleton University in Ottawa, Ontario, and the public advocacy group Public Citizen.

Private pharmacy benefit managers are "middlemen" that handle drug coverage for an estimated 250 million Americans. These managers aggregate the buying clout of enrollees through their health plans, enabling plan sponsors and individuals to obtain lower prices for their prescription drugs through price discounts from retail pharmacies, rebates from pharmaceutical man-

ufacturers and the efficiencies of mail service pharmacies. There are now just three major companies that handle the vast majority of this aggregate buying.

Illinois is among more than a dozen other states such as New York, California and Massachusetts that would require pharmaceutical companies to disclose their true expenses and justify price hikes. And in May, U.S. Rep. Jan Schakowsky, a Democrat from Illinois, and U.S. Sens. Tammy Baldwin (D-Wis.) and John McCain (R-Ariz.) introduced the FAIR Drug Pricing Act, a bipartisan and bicameral bill that takes the first step in addressing skyrocketing prescription drug prices by requiring transparency for pharmaceutical corporations that plan to increase drug prices.

Pharmaceutical companies and their lobbyists have a tendency to blame lawsuits for a lack of new medicines on the market or for not earning enough money to research new therapies. The facts instead show that lawsuits are a necessity when negligence occurs. Corporate America must constantly be reminded that patient safety comes first, and it must be held accountable for hiking the price of life-saving medications, including when they cause harm. **CL**

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