Methadone: Court Ruling Threatens FDA Regulations

A federal district court on 6 June handed down a ruling that could significantly loosen controls the Food and Drug Administration (FDA) has imposed on methadone, the controversial drug widely used in detoxification and maintenance programs for heroin addicts.

The court ruled against the FDA in a case brought by the American Pharmaceutical Association (APhA) which challenged the extent to which the FDA can administratively control channels of distribution of a drug that has been officially approved for marketing. The FDA will appeal the decision, and the APhA says it will carry the matter to the Supreme Court if necessary.

The APhA contends that the special conditions the FDA has placed on methadone distribution in order to prevent its diversion and abuse by heroin addicts wrongfully interfere with the rights of pharmacists to dispense the drug as an analgesic, the only other legal application for methadone. FDA officials fear the decision, if allowed to stand, could hamper future efforts by the agency to take administrative measures it thinks necessary to ensure that drugs are not abused. If corner drugstores are again allowed to dispense methadone, the FDA believes no amount of legal safeguards will prevent some increase in methadone abuse. Methadone is an excellent street drug, its quality guaranteed by the government, and Paul Perito, former deputy director of the Special Action Office for Drug Abuse Prevention (SAODAP), says it would take very few unscrupulous doctors to start another "epidemic."

Methadone, best known in the old days as Dolophine hydrochloride, has a history dating back to World War II as an analgesic and as a detoxicant for heroin addicts. It has long been an approved drug for those purposes. In the 1960's, however, it was discovered to be effective as a long-term maintenance drug to keep addicts off heroin. For this purpose it was classified by the FDA as an investigational new drug, or IND, which means a handful of researchers were permitted to conduct stringently controlled research programs to ascertain whether the drug was safe and efficacious for maintenance. This was at a time when heroin use in the United States was reaching epidemic proportions, and methadone soon got way out of hand. Ordinarily, only about a dozen researchers are allowed to work with IND's, and each program is limited to about 50 subjects. But by 1972, hundreds of physicians had obtained IND numbers and many were running "experimental" methadone maintenance programs serving hundreds of addicts apiece. Methadone had in practice become a treatment drug and its classification as an IND, as former SAODAP chief Jerome Jaffe contended, had become a "fiction." In the process, the drug had also been subjected to widespread diversion from legitimate programs, theft, and black-marketing. What's more, some unscrupulous physicians, who did not even have FDA approval as investigators, were conducting highly lucrative "detoxification" programs which were in fact maintenance programs. While some of these were obviously illegal, it was difficult to crack down on the outlaws because there was very little agreement in the medical profession as to how long it takes to detoxify (as opposed to maintain) an addict.

Emergency Situation

Clearly, something had to be done. Methadone, with all the social and racial overtones accruing to the drug problem, had become a "political drug," as SAODAP officials are fond of putting it. Also, although it is deemed safe and efficacious for maintenance, it can be lethal for people who haven't built up a tolerance to opiates.

Because of its implicit hazards the FDA did not want to make methadone an approved drug. On the other hand, restoring it to a strictly controlled IND status would have meant withdrawing methadone from most of those being maintained on it—by 1972, some 60,000 addicts. Finally the FDA, under prodding from SAODAP and Representative Paul Rogers (D–Fla.), chairman of the House health subcommittee, decided to promulgate regulations that placed methadone in a hybrid category somewhere between being an IND and an approved new drug application (NDA) (*Science*, 11 August 1972).

These regulations allow methadone to be distributed only through approved treatment programs, hospital pharmacies affiliated with such programs, and some community pharmacies where no hospital pharmacies are available. The regulations have made it possible for the FDA to keep close tabs on where the drug is going; they also make it nearly impossible for anyone to get an illegal prescription filled because the drug is simply not available from most pharmacies.

In putting through these regulations, the FDA and SAODAP, having gained the tacit approval of the American Medical Association, took the chance that doctors and pharmacists would not rebel at restrictions that affected a drug that was still officially classified, for analgesic and detoxification purposes, as a drug that, theoretically, should be available to all physicians.

Pharmacists Unhappy

But the APhA did rebel, hence the suit. That organization says it has no quarrel with whatever the FDA wants to do to control methadone intended for the treatment of addicts, but so long as methadone is approved as an analgesic, community pharmacies have the right to dispense it. This is strictly a matter of principle for the APhA—methadone has a very limited use as an analgesic, usually for severe cancer pain.

The decision, issued by the Federal District Court of the District of Columbia, was based on the Comprehensive Drug Abuse Prevention and Control Act of 1970, which says an approved NDA must be "safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof." According to the court decision, the government argued that "safe" could be construed as meaning "secure from possible misuse"—which would justify limitations on distribution. The court, however, concluded that " 'safe' was intended to refer [only] to a determination of the inherent safety or lack thereof of the drug . . . when used for its intended purpose." The court acknowledged that "methadone poses unique problems of medical judgment, law enforcement, and public policy" but said that did not justify

"implementing equally unique control solutions not authorized by Congress." Problems of illegal diversion were the responsibility of the Drug Enforcement Administration (DEA), it added.

FDA general counsel Peter Hutt says the court's decision is just plain "wrong." He says the court ignored the fact that nothing in the 1970 law is supposed to be construed to limit the FDA's authority under the Food, Drug and Cosmetic Act, which clearly allows the FDA to set conditions for the safe use of a drug.

If FDA's appeal of the ruling fails, the agency could keep its regulations intact by withdrawing approval for methadone as an analgesic. In any case, Hutt doesn't think problems of diversion could again become as serious as they were because of new monitoring procedures and tighter enforcement of existing laws. Also, an amendment added in May to the Controlled Substances Act (which applies to methadone) gives the DEA more muscle in enforcing prohibitions against illegal prescription-writing by requiring that doctors dealing with drugs for detoxification and maintenance undergo special separate registration with the DEA. When methadone is used for analgesia, it is prescribed in far smaller dosages than those for heroin addicts; therefore, any unregistered doctor writing prescriptions for massive amounts of methadone would stand out like a sore thumb. Perito points out, though, that tracking down violations as they occur is far more inefficient than preventing them in the first place.

For the APhA, though, the matter is chiefly one of principle—"Peter's principle," according to its executive director William H. Apple (referring to Hutt)—which goes as follows: "Anything Congress has not said the FDA can't do they can do."

The APhA's position is that violations of the law are the responsibility of law enforcement and not of regulatory agencies, and it regards attempts by the FDA to prevent illegal drug use through administrative rulings as a serious threat to the rights of doctors and pharmacists to exercise their professional discretion. The FDA asserts it has clear responsibility to impose such limitations in cases where drugs could be subjected to unsafe use.

Until the extent of FDA's jurisdiction is clarified, which may have to be done by congressional action, it looks as though that agency is in for a protracted era of conflict with the pharmacists.—CONSTANCE HOLDEN

Briefing

Federation of Scientists Plans "Great Leap Forward"

The 28-year-old Federation of American Scientists (FAS), which calls itself the country's only scientific lobbying society, is planning a "great leap forward," according to its director Jeremy Stone. In addition to its traditional preoccupation with the arms race, and its more recent concern with the rights of scientists, the FAS intends to develop staff expertise in three new areas: environment-energy, medicine-public health, and development-population-food supply. The society also wants to build its 3-year-old educational arm, the FAS Fund, into an in-depth source of information for scientists on matters relating to science and society.

To make all this possible, Stone needs $1 million for the Fund. To get it, he plans to travel around the country this summer talking to millionaires. The money is to be used to endow a modestly paid position in each of the three new fields, to be occupied by three retired scientists.

The FAS has already bought a new house with aid from its members, and plans to expand its three-person staff to around 10, including a scientist-lawyer. The FAS is concerned with scientists' rights to speak their minds without fear of reprisals from their employers, says Stone. If it is going to encourage scientists in this direction, the society also wants to be able to offer them legal advice and protection.

The FAS now puts out two newsletters, its *Public Interest Report* (part of the lobbying arm), and its *Professional Bulletin*. The latter will eventually be expanded into a monthly magazine. Stone even talks of acquiring the financially beleaguered *Bulletin of Atomic Scientists*.

The FAS spends some $90,000 a year on lobbying activities. Stone wants to hire three more lobbyists in the environment, health, and food areas who can approach Congress and government agencies with expertise comparable to that which Stone himself possesses in defense matters. If the endowment is successfully accumulated, the FAS Fund will be able to spend a comparable sum on its educational activities. Thus will the FAS achieve a true complementarity, says Stone, with lobbying pursuits acting as a "transmission belt" of information from the scientific community to Congress, and the Fund supplying an equally active belt carrying informed analyses of federal goings-on back to scientists.—C.H.

Soviet Seminar Visas Denied: Moscow Organizers Arrested

The Soviet government appears to be using the crude tactic of locking up or threatening dissident scientists who are planning a scientific seminar which will coincide with President Nixon's visit to Moscow this week (*Science*, 28 June). Alexander Voronel, who is the principal organizer of the meeting scheduled to begin 1 July, has been arrested and released twice by Soviet plainclothes police. Usually reliable sources also report that other seminar organizers, most of whom have lost their official scientific jobs after applying to emigrate to Israel, have been arrested: Mark Azbel, Victor Brailovsky, Alexander Lerner, Alexander Lunts, and Dmitri Ram. Another seminar organizer, Vitaly Rubin, has been threatened with prosecution for treason if he continues to organize the seminar, which is apparently still scheduled. Authorities also locked up dissenters during the President's 1972 Moscow visit, but these latest arrests are described by Western correspondents in Moscow as more extensive than those of 1972.

Meanwhile, both American and British scientists who had applied to go to Moscow for the dissident scientists' seminar have learned that the Soviet government has effectively denied their visa applications. To protest this, a group of American scientists, including some Nobel laureates, tried unsuccessfully to see Henry Kissinger during his Washington stopover.

More protests are being launched: the tone of them was indicated by Sylvan Schweber of Brandeis University who said in a statement: "[A]rbitrary Soviet actions . . . will surely affect the willingness of Western scientists to attend scientific conferences in Soviet Russia and to enter into cooperative scientific enterprises with the USSR." —D.S.