

June 29, 2015

Stephen Ostroff, MD
Acting Commissioner
U.S. Food and Drug Administration
Docket No. FDA-2013-N-0500
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Submitted via email to: Stephen.Ostroff@fda.hhs.gov

Dear Acting Commissioner Ostroff,

We are writing to express support for addressing barriers to communication that exist between physicians and drug and device manufacturers. To enhance patient care, physicians must have unrestricted access to information about benefits and risks of all therapies for treatment, including medically accepted alternative uses of approved drugs, biologics, and/or medical devices.

Physician-directed applications, “off-label” uses, or medically accepted alternative uses are an important component of the evolving practice of medicine. It is not uncommon for “off-label” uses to become standard of care. In fact, for certain subgroups (such as children and minorities) and conditions (such as certain types of cancer and rare diseases), an “off-label” therapy may be the accepted standard of care. In addition, important data about drugs and devices may be consistent with the FDA-approved use, but nevertheless exist outside of FDA-approved labeling. We are concerned that the companies that research, develop, and bring these treatments to market may not proactively communicate about useful information that they hold that is outside of the FDA-approved labeling. This may include important data related to subpopulations such as minorities, women, and any other groups who are traditionally underrepresented in clinical trials.

It is the mission of physicians in all specialties to use the safest and most effective means to assist patients in health maintenance, disease prevention, effective disease management and accessing curative therapies. Most of these endeavors are accomplished with the use of treatment modalities that are not only the standard of care but also FDA approved. However, in instances and circumstances where no definitive FDA-approved indication is available, the use of medically accepted alternative uses of approved medicines is often necessary.

Non-approved use of medical products has actually become the standard of care in the treatment of many orphan diseases and also frequently used when standard, accepted treatments fail in common diseases. For example, in the specialty of rheumatology, there are many diseases where little or no scientific or clinical information is present regarding the treatment of certain autoimmune diseases, including Sjögren’s syndrome, Behcet’s disease, many forms of vasculitis, inflammatory muscle diseases, scleroderma, calcium pyrophosphate deposition disease and other conditions. Despite the lack of FDA approved indications, those patients still require treatment and, as their physicians, we endeavor to use whatever information is available to help with informed decision-making. For instance, many non-approved indications can be found in standard textbooks of medicine and surgery in all specialties and subspecialties for patients of all ages and are the generally accepted standard of medical care.

Physicians are savvy consumers of scientific information, and FDA regulations should not restrict access to the latest scientific information, provided that it is truthful and not misleading. Manufacturers must be able to provide adequate directions for use of both approved and medically accepted alternative indications of approved drugs, biologics, and medical devices, along with appropriate disclosures regarding risks and limitations.

We encourage the Agency to work constructively with all stakeholders to ensure physicians have up-to-date scientific information and can provide the most effective, evidence-based care. We respectfully request that FDA begin a process this year to revise its regulations to allow companies to share truthful information about drugs and devices with healthcare professionals and payers – even if such information exists outside of FDA-approved labeling. Some of the undersigned organizations are member of the Alliance of Specialty Medicine, which has a longstanding position on off-label communication. For reference, that policy paper is attached in its entirety.

Please contact any of the undersigned organizations should you have any questions or require additional information.

Sincerely,

American Academy of Facial Plastic and Reconstructive Surgery
American Association of Neurological Surgeons
American College of Mohs Surgery
American Gastroenterological Association
American Society for Dermatologic Surgery Association
American Society of Cataract and Refractive Surgery
American Society of Echocardiography
American Society of Plastic Surgeons
American Urological Association
Coalition of State Rheumatology Organizations
Congress of Neurological Surgeons
GLMA: Health Professionals Advancing LGBT Equality
National Black Nurses Association
National Council of Asian and Pacific Islander Physicians
National Hispanic Medical Association
National Medical Association
Salud USA
Society for Cardiovascular Angiography and Interventions
Society for Excellence in Eyecare

ATTACHMENT

Physician-Directed Applications

A Position Statement of the Alliance of Specialty Medicine

Physician-Directed Applications

Physician-directed applications, also known as “off-label”¹ uses, are an integral component of the art and science of medical practice, particularly for specialty physicians. Using their medical expertise and judgment, physicians may choose to use approved medical products such as prescription drugs, biologics, and devices, for uses not listed in the United States Food and Drug Administration (FDA) approved or cleared labeling, as appropriate.

Background

It is not uncommon for some off-label uses of medical products to become standard of care in the practice of medicine.² In fact, off-label uses of certain medical devices and drugs can be found in standard textbooks for medical subspecialties. In certain patient populations, such as children and cancer patients, off-label use of medical products is extensive when appropriate therapies have not been developed or evaluated for the populations or a clinical trial is not feasible (such as in the case of rare diseases). In these circumstances, physician-directed applications provide treatments that may not otherwise be available for some of the nation’s youngest and most critically ill patients.

Physicians use the best available clinical evidence, judgment, and consideration of individual patient circumstances and preferences in treating and managing disease and injury. Good medical practice and the best interests of the patient require that physicians use legally-available drugs, biologics, and devices according to their best clinical expertise and judgment.

FDA Regulatory Principles and Labeling

The FDA has broad regulatory authority over the approval of pharmaceutical, medical device, and biologic products in the United States. Products may only be labeled,

¹ “Off-label” use for approved prescription drugs, biologics, and medical devices means any use that is not specified in the labeling approved by the FDA. For cleared medical devices, “off-label” means any use that is not included in the cleared “indications for use.” Labeling is considered as any written material, which accompanies, supplements, or explains the product.

² Refer to specific specialty examples document at specialtydocs.org

promoted, and advertised for the uses that the FDA has approved or cleared. Labeling of a medical product is negotiated between the FDA and the manufacturer to ensure that the labeling accurately reflects the safety and effectiveness data presented in the manufacturer's marketing application. Furthermore, a drug, device, or biologics manufacturer may choose, for economic reasons, not to pursue additional labeling for indications that may increase the cost of obtaining FDA approval or clearance. As a result, the label may not reflect changes in indications, contraindications, warnings, or dosage, supported by new data that become available after approval or clearance.

Practice of Medicine Exception

The Food and Drug Administration does not have the statutory authority to regulate the practice of medicine. In 1998, the US Supreme Court issued a judgment in *Buckman v. Henney* affirming physicians' right to use any FDA-approved therapies they believe are in the best interests of their patients. In addition, section 906 of the federal Food, Drug, and Cosmetic Act addresses the issue of the practice of medicine and states the following:

Nothing in this Act shall be construed to limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device to a patient for any condition or disease within a legitimate health care practitioner-patient relationship. This section shall not limit any existing authority of the Secretary to establish and enforce restrictions on the sale or distribution, or in the labeling, of a device that are part of a determination of substantial equivalence, established as a condition of approval, or promulgated through regulations. Further, this section shall not change any existing prohibition on the promotion of unapproved uses of legally marketed devices.

Physicians may prescribe or administer any legally-marketed product for an off-label use within the practice of medicine.

Standards of Care

Standards of care change over time, and the emergence of new literature may alter treatment patterns. As a result, there are instances when the off-label use of medical products evolves to be recognized as a generally accepted medical standard. There are also instances in which the labeled uses of medical products are found to have contraindications and interactions that reduce their safety and efficacy. Specialty physicians are encouraged to notify the relevant agency or institution of adverse events related to the use of medical products.

Access to Available Information

To enhance patient care, physicians must have unrestricted access to truthful, non-misleading information about the benefits and risks of all therapies available for treatment, including medically accepted alternative uses of approved prescription drugs, biologics, and/or devices. Manufacturers must be able to provide adequate directions for use of both approved and medically accepted alternative indications of approved medicines and treatments, along with adequate disclosures regarding risks and the limitations of scientific understanding.

Provided there is prominent disclosure that FDA does not approve such use, limitations on communications should only be related to patient risk based on factors including the approval status of the medicine, general medical acceptance of the treatment, and the level of scientific sophistication of the audience.

Informed Consent

Informed consent is the process by which the treating health care provider discloses appropriate information to a competent patient so that the patient may make a voluntary choice to accept or refuse treatment.³ Among other things, informed consent requires a discussion of reasonable alternatives to the proposed intervention, which may include a discussion of medically accepted alternative uses of approved prescription drugs, biologics, or devices.

Physicians and medical institutions have varied practices for obtaining and documenting informed consent provided to patients that may or may not address off-label use. In some instances where an off-label use has come to be considered a standard of care in the clinical community and/or raises little risk of an adverse outcome, the use may not be discussed specifically with the patient. However, physicians should use their clinical judgment in determining the need to discuss specific off-label uses with patients and include information about such uses in informed consent materials when the off-label use could be a significant factor in the patient's decision about whether to undergo the procedure. If a patient has questions, the physician should also personally inform the patient that the product is being used in an off-label manner and discuss the benefit/risk profile for that use. This approach not only serves the patient's best interests, but might also help to limit the physician's liability risk.

Benefits and Risks of Physician-Directed Applications

Benefits and risks exist with off-label use. Benefits include the ability to provide care to patients who may not receive appropriate treatment or perhaps treatment at all without off-label use, such as many pediatric patients. Risks include the potential for

³ Appelbaum PS. Assessment of patient's competence to consent to treatment. *New England Journal of Medicine*. 2007; 357: 1834-1840.

limited effectiveness and unexpected side-effects from uses that have not been adequately studied for the specific indication or patient population.

It is well-established that physicians who use a product for an indication not in the approved or cleared labeling have the responsibility: (1) to be well informed about the product; (2) to base its use on a firm scientific rationale and sound medical evidence; and (3) to maintain awareness of the product's uses and effects.

Conflicts of Interest

Conflicts of interest should be disclosed in compliance with all state and federal laws and regulations. Specialty physicians engaging in compensated arrangements with industry should disclose their financial arrangements in medical education, research, and professional activities. Physicians who are involved in product development and/or testing should disclose this role to patients. Physicians should avoid interactions and activities where discussions of off-label use could be considered promotional in nature.

Statement of Policy

The Alliance of Specialty Medicine maintains that a specialty physician may prescribe or administer any legally-marketed product for an off-label use within the authorized practice of medicine where the physician exercises appropriate medical judgment and it is in the best interests of the patient. If specialty physicians use a product for an indication not in the approved or cleared labeling, they have the responsibility: (1) to be well informed about the product; (2) to base its use on a firm scientific rationale and sound medical evidence; and (3) to maintain awareness of the product's use and effects. Specialty physicians should appropriately counsel patients about the benefits and risks of the proposed treatment, and whether alternative treatments might be available. Specialty physicians are encouraged to notify the relevant agency or institution of adverse events related to the use of medical products.