WSJ.com THE WALL STREET JOURNAL. ONLINE

August 14, 2007

COMMENTARY

The FDA's Deadly Track Record

By RONALD L. TROWBRIDGE and STEVEN WALKER
August 14, 2007; Page A17

Last week, the full D.C. Circuit Court of Appeals reversed an earlier decision by its own three-judge panel and ruled 8-2 against a dying patient's right to pursue life by taking investigational -- but as yet FDA-unapproved -- drugs.

The case was filed in 2003 by the Abigail Alliance for Better Access to Developmental Drugs and the Washington Legal Foundation. We argued that terminal patients with no options left but death have a constitutional right to such therapy in the care of a qualified physician.

The Alliance began pushing for access to investigational drugs for terminal patients after its founding in mid-2001 upon the death of Abigail Burroughs, who was denied an investigational drug (Erbitux) that an early trial showed might have helped her. She and her doctor were right, but she never got the drug.

Over the past five years, the Alliance has pushed for access to 12 exceptionally promising investigational cancer drugs which have subsequently been approved by the FDA and now represent standard care. At the time we began our advocacy, each of the drugs had cleared at least preliminary Phase 1 testing, and in some cases more-advanced Phase 2 or Phase 3 trials. In other words, they obviously worked for some patients.

Gleevec set a tragic standard for loss of life at the hands of FDA bureaucrats. Coming out of Phase I testing in 1998, it was known beyond any reasonable doubt to be safe and effective. The Alliance started requesting access to the drug for chronic myelogenous leukemia (CML) patients in June 2001. By the time FDA approved Gleevec in March 2003, approximately 3,600 patients had been denied access to the drug. Many died waiting. More than 80% of the small number of patients who got Gleevec in clinical trials before the drug was approved are alive today.

Eloxatin, for advanced colorectal cancer, was summarily rejected by the FDA in March 2000 despite its being approved in at least 29 other countries. In January 2002, we started to ask the FDA to allow patients access. The agency delayed approval until August. In between, about 40,000 Americans died without ever getting the drug.

Erbitux, for the treatment of colorectal and head and neck cancers, was rejected by FDA in December 2001 when the agency refused to review the sponsor's application. The Alliance had begun asking the FDA to allow patient access to the drug six months earlier. The FDA delayed approval until February 2004. Almost 179,000 people with colorectal and head and neck cancer

died waiting.

The Alliance began working for access to Revlimid, for multiple myeloma and myelodysplastic syndrome, in June 2002. Patients had to wait until December 2005 for FDA approval. Nearly 74,000 patients with these terminal cancers died without ever getting Revlimid.

The Alliance asked that patients get access to Velcade in June 2002. Curiously, the FDA points to this drug as proof it can work fast, but they didn't approve it until May 2003. At the time, trial results suggested that only about 25% of multiple myeloma patients should get the drug (since shown to be too low), but even with that limitation, about 2,600 patients died without ever getting Velcade.

Beginning in June 2004, we started pushing the FDA to make Nexavar and Sutent, both highly promising drugs for kidney cancer, available. The agency eventually approved Nexavar in December 2005 and Sutent in January 2006. But that was only after evidence of efficacy so compelling emerged for Nexavar that the trial demanded by the FDA -- in which dying kidney cancer patients seeking the drug were being given no other choice (except certain death from their cancer) but to agree to a 50/50 chance of being blindly randomized to a sugar pill -- was stopped by Bayer for ethical reasons and the placebo patients allowed to get the drug. The sponsor seeking approval for Sutent was given a similar option by FDA if it wanted its drug approved. About 20,000 kidney cancer patients died waiting for both drugs.

The Alliance began its push for availability of Avastin for multiple cancers in June 2002. FDA finally approved this obviously effective cancer drug in February 2004. It is now approved for colorectal and lung cancers, and being successfully used off label for several more. Almost 360,000 patients with lung and colon cancer died without ever getting Avastin.

Tarceva is used for patients with lung cancer. We began pushing for its availability in June 2001, the FDA approved the drug in November 2004. In the interim, 531,000 people with lung cancer died. Tarceva also extends the effectiveness of an existing drug for pancreatic cancer, and about 102,000 patients died from that disease during the FDA's delay.

In June 2002 we started pushing for availability and approval of Bexxar for non-Hodgkin's lymphoma. FDA, after rejecting and delaying this highly effective drug repeatedly over several years, finally approved it under intense pressure from oncologists in June 2003. About 26,000 died during the delay without ever getting the chance to try the drug. The FDA's regulatory hatchet job on Bexxar prior to its approval has caused the drug to be dramatically underused, extending the damage done by the agency's intransigence and incompetence.

In June 2002 we began our efforts to gain access to Alimta for lung cancer patients. FDA didn't approve it until February 2004. In the interim, approximately 249,000 lung cancer patients died without the chance of trying this drug to see if it would control their disease or extend their life.

The alliance started working for access to Tykerb for breast cancer in June 2004 but the FDA didn't approve the drug until March 2007. About 25% of breast cancers include the biomarker predictive of benefit from Tykerb; nearly 28,000 women who had this marker died from their cancer waiting for Tykerb. They would, according to the FDA, have each lived an average of eight months longer. Long enough, perhaps, to see a child graduate from college or get married, or to meet a new grandchild.

In sum, these 12 drugs -- had they been available to people denied entry to clinical trials -- might have helped more than one million mothers, fathers, sons and daughters live longer, better lives. We have actually underestimated the number of "life-years" lost at more than 520,000, because we have not included other safe and effective uses of these drugs that the FDA has yet to approve.

Recently, it was decided that Provenge (another drug we have been trying to get for years) will be kept away from prostate cancer sufferers for up to three more years. The reason for the delay? A small but aggressive club of FDA advisers hand-picked by the director of the agency's Office of Oncology Drug Products, Dr. Richard Pazdur, think the statistics are not yet perfect enough.

Recently, the FDA responded to our lawsuit by proposing "new" regulations governing access to investigational drugs. They propose to change nothing.

The American Cancer Society reports that some 550,000 cancer patients die annually, making the number of cancer deaths from 1997 to 2005 about 4.8 million. Over that same period, the FDA reports granting individual access to an investigational drug to not more than 650 people per year for all diseases and drugs -- a pathetic, even cruel, pittance. A few thousand more patients managed to gain access by enrolling in relatively small clinical trials or exceedingly rare expanded access programs.

The other 4.7 plus million cancer patients, not to mention millions more with other diseases, were abandoned to die, denied access to progress by their own FDA when they needed it most.

We will appeal the decision in *Abigail Alliance v. Eschenbach* to the Supreme Court, and agree with only one thing in the majority opinion. Congress should pass our pending legislation, called the Access Act, now. It should be added to the FDA reauthorization bill headed for a vote in September.

This is massive human tragedy, made even worse by the fact that it didn't and doesn't have to be this way. Looking at FDA automatons and the D.C. Circuit Court brings to mind T. S. Eliot's question, "Where is the wisdom we have lost in knowledge?"

Messrs. Trowbridge and Walker volunteer, respectively, as adjunct scholar and chief adviser to the Abigail Alliance for Better Access to Developmental Drugs. Mr. Walker also is co-founder of the Abigail Alliance.

URL for this article:
http://online.wsj.com/article/SB118705547735996773.html

RELATED ARTICLES AND BLOGS

Related Articles from the Online Journal

- Cancer Regression
- FDA Panel Says Data Is Needed On GPC Biotech Cancer Drug

Blog Posts About This Topic

- Plastic: We Don't Care If You Are Dying. We Shall Release No Drug Before It... plastic.com
- Drugs, Drugs and more Drugs healthcare-economist.com

More related content *Powered by Sphere*