

FLIRTING WITH DISASTER – THE WRONG TIME FOR AN EXCELLENT IDEA

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With the best of intentions, some health-freedom groups in America are calling for the reform of the U.S. Food and Drug Administration (FDA). This is an excellent idea. Unfortunately, it could hardly be trumpeted at a worst time.

Does the FDA need reforming? Absolutely. And those groups and individuals calling for a complete overhaul of the FDA could not be more correct in their assessment. As they – and we – see it, the FDA has completely failed in its mission to protect the American people's health. If anything, the FDA is nothing more than a hired gun for the interests of pharmaceutical companies and does precious little to step outside that role.

Even the U.S. government itself issued a report late last year criticizing the FDA. Its 60-page report, entitled *FDA Science and Mission at Risk*, states, among other things, that “The FDA cannot fulfill its mission because its scientific workforce does not have sufficient capacity and capability” and [t]he development of medical products based on ‘new’ science cannot adequately be regulated by the FDA.” The Report’s critical comments get worse: “FDA does not have the capacity to ensure the safety of food for the nation.”

Seemingly, then, with such high-level criticism and with a change of administration pending in the White House, the time would be ripe to push for a real reform of the FDA. And several health-freedom organizations are doing just that, with press releases and website petition drives calling for FDA reform. “Your signature is vital,” they say, to persuade Congress to reform the FDA.

The flaw in their reasoning, however, is that this is the *worst* time for trying to reform FDA. The Democrats have just captured solid majorities in the U.S. House of Representatives and the Senate. With control of both the chairmanship of the committee that oversees the FDA

and the Presidency, and with constitutional restraints nothing but a distant memory at best, the Democrats can do almost whatever they want. They could legislate an improved, kinder and more caring FDA concerned with Americans’ health.

Or, they could legislate an even tougher FDA, one that would take an even stronger stance on enforcement against “health frauds” (i.e., alternative health care such as supplements, homeopathy, herbs, and the like), with increased penalties, fines, and imprisonment.

Now, given the history of Congress since 9/11, given the fact that pharmaceutical companies by far and away donated more money to the Democrats’ political campaigns, and given the long track record of those Democrats, such as Senators Dick Durbin and Ted Kennedy and Representatives John Dingell and Henry Waxman, now firmly holding the reins of power and control in the House and the Senate, which version of the FDA would you honestly expect to come out of any “reform” of the FDA by the next session of Congress? Would you trust anti-supplement Durbin, Kennedy, Dingell, and Waxman to do the right thing and create a caring, pro-supplement FDA? Or, wouldn’t you rather expect that they would take any cry for reforming the FDA to be an opportunity to carry forward – with solid majorities in Congress behind them as support and a mandate for – their previous efforts to restore FDA’s arbitrary powers by eliminating the Dietary Supplement Health and Education Act of 1994 (DSHEA)?

If I had to bet on the outcome, my money would be squarely behind the latter possibility – certainty really, in my view as a food-and-drug lawyer having practiced for 28 years – and would not for one minute take the enormous risk of attempting to “reform” the FDA in this political environment at this time. The stakes are too high. The risks are too high. And the probability that we will

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all end up with a Frankenstein monster far worse than the one we already confront is certainly too great. We would be fools to push for any FDA reform at the hands of the rabidly anti-health-freedom crowd that currently controls Congress, especially now that Rep. Waxman has replaced the somewhat more pragmatic Rep. Dingell as chairman of the powerful Energy & Commerce Committee.

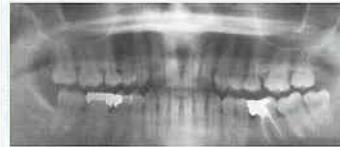
So, the National Health Federation absolutely opposes any attempt to reform the FDA at this time. There is a time and a season for everything. And this is neither the time nor the season to try to advance our vision of a reformed FDA.

It is imperative that all of you who have signed “Reform the FDA” Petitions re-contact their sponsors and ask that they remove your names from the Petitions. You should even ask them to stop their campaigns, for all of the reasons given above. Fortunately, at least in one sad respect, the next Congress’ attention will be mostly occupied with the Nation’s and World’s rapidly withering economic condition and not on far-less important FDA “reform.” But if Congress’ efforts to fix the economy turn out the same as all its other efforts, then we are all in for one big shellacking. And FDA “reform” will be the least of our worries. 

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