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# FDA BOOT CAMP

Basic Training for Products Liability and Patent Lawyers

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**Paul T. Kim**

Partner  
Foley Hoag LLP



**Peter O. Safir**

Partner  
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## FEATURING SPECIAL DRUG MARKETING GUIDANCE SESSIONS ON:

Advertising & Promotion  
DTC Advertising  
Off-Label

## SPECIAL TRACKS:

### PATENT TRACK

Non-Patent Exclusivity  
Bioequivalency  
Follow-On Biologics

### MEDICAL DEVICE TRACK

Classification and Premarket Review  
Post-Market Requirements  
Labeling and Advertising

The FDA Amendments Act of 2007 (FDAAA) is one of the most comprehensive revisions of the FDCA in decades. Preminent members of the nation's Food and Drug bar will **drill you in the basics of FDA law and regulation — and the nuances of FDAAA —** as they help you:

- **MASTER** the basics of the **application and approval processes** for drugs, biologics and devices
- **COMPREHEND** the structure of the FDA and the roles of the three major agency centers: CDER, CBER, and CDHR
- **DEVELOP** a practical working knowledge of **clinical trials** for drugs and biologics and the **clearance process** for devices
- **LEARN** how devices are classified, monitored, and regulated
- **UNDERSTAND** the complexities of pharmaceutical IP and the regulatory balance between **brand name** and **generic** products
- **RECOGNIZE** the pivotal role of **labeling** in the drug and biologics approval process
- **NAVIGATE** the protocols of **adverse events monitoring**, signal detection, product withdrawals, and **recalls**
- **GAIN** a clear understanding of the laws and regulations controlling the **advertising, marketing and promotion** of drugs, biologics and devices

## PLUS, FEATURING SPECIAL ADDRESSES BY:

**James H. Smith**

Associate Chief Counsel  
U.S. Food and Drug Administration

**Ioana Petrou**

Criminal Health Care Fraud Coordinator  
U.S. Attorney's Office, NDCA

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So much hinges on what happened during the pre-approval, approval, or post-approval periods. Learn to navigate your way through the regulatory maze that plays such a crucial role to your cases and practice areas.

The approval process...pre-approval concerns...product labeling...clinical trials...adverse events reports...patent concerns...exclusivity... All are critical aspects in the commercialization process for drugs, biologics, and devices that are governed by FDA law and regulation. Plus, the FDA Amendments Act of 2007 (FDAAA) is one of the most comprehensive revisions of FDA law in decades. And recent court cases and high-profile trials concerning FDA-regulated products have made it clear that it is essential for attorneys who do not have regulatory practices — but who do deal with FDA-regulated products — to have a familiarity with these concepts. The same can be said of securities experts and business executives in the life sciences arena.

Products liability and patent litigation concerning these products often hinges on what happened during the pre-approval, approval, or post-approval periods.

However, many products liability lawyers, patent counsel, and business and investment experts — despite their tenure in working with FDA-regulated products — are not well-versed in the essentials of the approval process and the regulatory hurdles of the post-approval period.

**Boost your FDA regulatory IQ.  
Develop expertise in the FDA approval process  
and the ins and outs of post-approval challenges.**

ACI's FDA Boot Camp has been designed to give products and patent litigators, as well as patent prosecutors and life sciences investment and securities experts, a strong working knowledge of core FDA competencies, including the nuances of FDAAA.

A distinguished faculty of top FDA regulatory experts — a “Who's Who of the FDA Bar” — will share their knowledge and give you critical insights on:

- The organization, jurisdiction, functions, and operations of the FDA
- The essentials of the approval process for drugs, biologics, and devices, including:
  - NDAs
  - OTC Approval
  - INDs
  - 510(k) submissions
  - BLAs
  - PMA process
- Clinical trials for drugs and biologics and the clearance process for devices
- The classification of devices and the concept of “risk-based” classification
- The role of the Hatch-Waxman Act in the patenting of drugs and biologics
- Labeling in the drug and biologics approval process
- cGMPs and other manufacturing concerns relative to products liability
- Proactive adverse events monitoring and signal detection
- Requirements for post-approval advertising and promotion
- Recalls, product withdrawals, and FDA oversight authority
- Current government enforcement priorities and key legislative initiatives

Other program highlights include special Patent and Medical Device tracks.

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## DISTINGUISHED FACULTY

### CO-CHAIRS:



**Paul T. Kim**  
Foley Hoag LLP



**Peter O. Safir**  
Covington & Burling LLP

### SPEAKERS:



**Jennifer L. Bragg**  
King & Spalding LLP



**Jayne P. Bultena**  
Foley Hoag LLP



**John D. Carlin**  
Fitzpatrick, Cella, Harper & Scinto



**Robert F. Church**  
Hogan & Hartson



**Dickerson M. Downing**  
Crowell & Moring, LLP



**Mark A. Heller**  
Goodwin Procter LLP



**Bret Koplow**  
Patton Boggs LLP



**Gregory H. Levine**  
Arnold & Porter LLP



**William A. McGrath**  
Wiley Rein LLP

**Joyce L. Morrison**  
Xencor, Inc.



**Stephen C. Payne**  
Sidley Austin LLP



**Donna M. Prais**  
Hunton & Williams LLP

**Ioana Petrou**  
US Attorney's Office, NDCA

**Eric Rogers**  
Genentech



**Deborah M. Shelton**  
Sheppard Mullin Richter  
& Hampton LLP



**Robin M. Silva**  
Morgan, Lewis & Bockius LLP

**James H. Smith**  
U.S. Food and Drug Administration



**Frederick A. Stearns**  
Keller Heckman LLP



**Gretchen R. Stroud**  
Cooley Godward Kronish LLP



**Stephen D. Terman**  
Olsson Frank Weeda Terman  
Bode Matz PC



**Elaine H. Tseng**  
King & Spalding LLP



**Judith A. Waltz**  
Foley & Lardner LLP

**Karen A. Weaver**  
Epstein Becker & Green, P.C.



**Jessica R. Wolff**  
Heller Ehrman LLP

## DAY ONE • THURSDAY, MAY 29, 2008

7:30 Registration and Continental Breakfast ☞

8:10 **Co-Chairs' Opening Remarks**



**Paul T. Kim**

Partner

Foley Hoag LLP

(Boston, MA and Washington, DC)



**Peter O. Safir**

Partner

Covington & Burling LLP

(Washington, DC)

8:30 **The Basics: Understanding and Working with the FDA — Jurisdiction, Functions, Organization, and Operations**



**Jayne P. Bultena**

Partner

Foley Hoag LLP

(Washington, DC)

- FDA Overview
- How the FDA is organized
  - Department of Health and Human Services and the Commissioner
  - The 5 FDA Centers and the Office of Regulatory Affairs and their functions
- The 3 major centers and their roles
  - CDER (Drug)
  - CBER (Biologic)
  - CDRH (Device)
- Understanding how CDER and CBER intersect
  - intersection with CDRH
- Defining the scope of the FDA's jurisdiction
- Examining how the FDA exercises its jurisdiction:
  - rule making
  - product decisions
  - enforcement
  - informal mechanisms
- Reviewing the laws that the FDA enforces
  - Food Drug & Cosmetic Act
  - Prescription Drug Marketing Act
  - Public Health Services Act
  - Hatch-Waxman Act
  - other applicable laws
- Defining drugs, biologics, and medical devices
- Labeling: when is a drug a drug and not a medical device or cosmetic, and the consequences
- Defining combination products
- Working with the FDA
  - Administrative Procedures Act
  - formal and informal dispute resolution mechanisms
- FDA's policies and procedures

### PREAPPROVAL AND APPROVAL

9:15 **The Nature of the Approval Process**



**Gregory H. Levine**

Partner

Arnold & Porter LLP

(Washington, DC)

### *Rx Drugs*

- Understanding the difference between "new drugs" and other drugs
- Overview of the research, development, and approval process for new drugs
- The investigational new drug application (IND)
  - when you need to file one
  - what it needs to contain
  - what it entitles you to do
- The new drug application (NDA)
  - when you need to file one
  - what it needs to contain
  - FDA review process and timing
  - advisory committees
- Accelerated approval (fast track)
- FDA/CMS Coordination

### *Biological Products*

- What are biological products?
- What does it mean to say that they are also "drugs"?
  - which "new drugs" require BLAs instead of NDAs?
- How does the research, development, and approval process for biological products differ from the process for new drugs?
- The biologics license application (BLA)
  - when you need to file one
  - what it needs to contain
  - FDA review process and timing
  - advisory committees
- Key similarities and differences between the drug and biological product schemes

### *OTC Products*

- The concept of "OTC" (OTC-ness)
- The OTC Review
  - which drugs are covered?
  - what is a "monograph"?
  - what does a monograph contain?
  - what if you want to deviate from the monograph (innovate)?
- When is a new drug suitable for OTC?
  - when must a drug be Rx only?
  - how do you switch a new drug from Rx to OTC?
  - can a new drug be Rx in some forms/dosages/etc., and OTC in others?
- Overview of how an OTC drug comes to market
  - if it's a new drug
  - if it's not a new drug

10:10 Morning Coffee Break ☞

10:25 **Understanding the Clinical Trial Process for Drugs and Biologics**



**Robert F. Church**

Partner

Hogan & Hartson

(Los Angeles, CA)

- Overview of the clinical trial process
  - phases of testing (I-IV)
  - what happens in each phase?
  - who conducts the testing?
  - special considerations for Phase IV testing
- Regulatory requirements
  - informed consent



- IRBs
- sponsor obligations
- investigator obligations
- FDA authority
- Other issues
  - CROs
  - how do clinical trials for drugs differ from clinical trials for biologics?
- Disclosure of clinical trial information
  - FDA Amendments Act of 2007
  - FDAMA § 113
  - clinicaltrials.gov
  - PhRMA policies
- CMS coverage for clinical trials and research

## 11:20 Patent and IP Overview: Hatch-Waxman, Trademark Protection, and More



**Dickerson M. Downing**  
Partner  
Crowell & Moring, LLP  
(New York, NY)

**Joyce L. Morrison**  
Vice President, Intellectual Property  
Xencor, Inc.  
(Monrovia, CA)



**Robin M. Silva**  
Partner  
Morgan, Lewis & Bockius LLP  
(San Francisco, CA)



**Gretchen R. Stroud**  
Special Counsel  
Cooley Godward Kronish LLP  
(Palo Alto, CA)

### IP Protection

- Analyzing the patenting process
- Seeking patent protection during the pre-approval process
- Making up for time lost in the patent life cycle during the pre-approval process
  - IP and regulatory redress for lost time
- Distinguishing the patenting process for drugs from that of biologics
  - which biologics are treated as drugs and why?
- Identifying the respective roles of the FDA and the PTO in the patenting of drugs and biological products

### Drugs

- NDA v. ANDA (Abbreviated New Drug Application)
  - how do they differ?
- ANDA
  - what does an ANDA require?
  - potential actions by NDA and patent owners
- Paragraph IV Certifications and Notice Letters
- Bioequivalence defined
- The Orange Book: what is it and why is it Orange?
  - listings
  - de-listings
- The patent end game (Hatch-Waxman Overview)
  - overview of Hatch-Waxman and reforms under MMA
  - the Orange Book

- exclusivity (180 day)
- 30-month stay
- patent extensions
- the safe harbor
- FD&C 505b2 (an alternate pathway to an ANDA)

### Trademark Issues

- Identifying the PTO and FDA clearances necessary for trade name/trademark approval on your product

## 12:50 Networking Luncheon for Speakers and Delegates

## 2:00 Drugs and Biological Products: Labeling

**Karen A. Weaver**  
Member

Epstein Becker & Green, P.C.  
(Los Angeles, CA)

The labeling of the drug/biological product is the final stage of the approval process. The labeling affects what you can do post-approval. It is the point of transition between the approval process and post-approval world.

- Labeling overview: key regulatory requirements, information, and contents
- Review process for labeling
- How does the final labeling control the scope of post-market activities?
- When should the labeling be amended post-market?
  - what is the process for doing so?
- How is the labeling a defense in products litigation?

## 2:55 Afternoon Refreshment Break

## 3:10 From Theory to Practice: FDAAA, Future FDA and Legislative Priorities, Other Enforcement Initiatives, and Beyond

**James H. Smith**

Associate Chief Counsel  
U.S. Food and Drug Administration  
(Rockville, MD)

**Ioana Petrou**

Criminal Health Care Fraud Coordinator  
US Attorney's Office, NDCA  
(San Francisco, CA)



**Paul T. Kim**

Partner  
Foley Hoag LLP  
(Boston, MA and Washington, DC)



**Judith A. Waltz**

Partner  
Foley & Lardner LLP  
(San Francisco, CA)

**Moderator:**



**Bret Koplou**

Partner  
Patton Boggs LLP  
(Washington, DC)

- FDAAA – how companies must now adapt
  - implementation considerations

- avoiding civil penalties and fines for noncompliance
- Overriding philosophy, goals, and priorities of the FDA at this juncture and what to expect to be high on the agency's agenda
- What now sparks an FDA investigation?
- Steps to take after receiving warning letters
- Consent decrees: what you now must know
- Other significant recently enacted and proposed legislation and their food and drug implications
  - Sunshine Acts and other bills requiring additional disclosures and greater transparency
  - proposed amendments to the Federal False Claims Act
  - analysis of increased legislative activity at the state level
  - developing methods for tracking and complying with diverse requirements
- When will DOJ prosecute?
- Understanding government enforcement tools and procedures
- Current enforcement priorities as evidenced by recent investigations
- Identifying conduct that can trigger government scrutiny
- How recent large settlements should be reflected in risk mitigation strategies

## POST-APPROVAL

### 4:45 cGMPs: Drugs and Biologics (current Good Manufacturing Practices)



**Stephen C. Payne**  
Partner  
Sidley Austin LLP  
(Washington, DC)

- Examining cGMPs and the scope of their importance in pharmaceutical/biological product commercialization
- Looking at how cGMPs factor into the scope of the FDA's authority and history
- Exploring the scope of the FDA's cGMP Initiative and how the concept of "risk-based" cGMPs is defined
- Defining the concept of validation
- How are laboratory investigations in relation to cGMPs conducted?
- Defining the term "quality systems"
- How are cGMPs factoring into products litigation?

### 5:35 Conference Adjourns

## DAY TWO • FRIDAY, MAY 30, 2008

### 7:30 Continental Breakfast ☕

### 8:00 Co-Chairs' Remarks

## POST-APPROVAL (Continued)

### 8:10 Advertising and Promotion



**William A. McGrath**  
Partner  
Wiley Rein LLP  
(Washington, DC)

- Overview of laws and regulations controlling the advertising, marketing, and promotion of prescription drugs and biologics
  - 21 CFR Sections 202.1, 352(n), 314.81(b)(3); Section 352(n) of FD&CA

- guidance documents
- DDMAC (Division of Drug Marketing, Advertising and Communications)
  - what duties and responsibilities is DDMAC charged with?
  - what are its enforcement capabilities and jurisdiction?
  - analysis of sample warning letters
- Identifying the role of the FTC in the advertising and promotion of drugs
  - SEC?
- Advertising requirements for prescription v. nonprescription products
- Reviewing the steps which DDMAC takes for the review of launch campaigns and promotional materials
  - overview of the promotional materials submission and review process
- What constitutes a launch?
- What defines an advertisement?
  - what information must a drug advertisement include?
- Exploring the role of the label in advertising

### 9:05 Special Concerns for DTC Advertising



**Peter O. Safir**  
Partner  
Covington & Burling LLP  
(Washington, DC)

- How is direct-to-consumer advertising regulated and monitored?
  - how is it different from other pharmaceutical advertising?
- What information must every DTC ad contain?
- How do the PhRMA DTC guidelines interplay with current FDA regulation?
- FDA's DTC Television User Fee Program
- Advertising and new media
  - how is Internet and e-mail advertising regulated?

### 9:55 Morning Coffee Break ☕

### 10:10 Regulation and Dissemination of Off-Label Information



**Jennifer L. Bragg**  
Partner  
King & Spalding LLP  
(Washington, DC)

- Overview of the FDA's regulation of off-label promotion
- How can information on off-label or unapproved uses of drugs and biologics be disseminated?
  - peer review articles v. ghost-writing
  - MSLs v. sales reps
- What are the consequences of inappropriate off-label promotion?
  - the role of the OIG, U.S. Attorney's Office, and states in monitoring off-label promotion

### 11:00 Adverse Events Monitoring, Pharmacovigilance and Risk Management



**Bret Koplou**  
Partner  
Patton Boggs LLP  
(Washington, DC)

- What is pharmacovigilance?
- How pharmacovigilance uses adverse event reports
  - how ADE reports come to a company

- solicited direct reports
- unsolicited direct reports
- indirect reports
- how companies investigate, analyze and use ADE reports
  - causality assessments
  - labeling changes
- requirements for reporting ADEs to regulatory agencies
  - premarket stage
  - post-market stage
- how regulatory agencies use ADE reports
- Examining other tools for pharmacovigilance
- What is risk management?
  - the new Risk Evaluation and Minimization Strategies (REMS) law
  - Risk evaluation in the approval process
  - Risk minimization tools
  - REMS assessments
- Enforcement of ADE reporting and REMS requirements
- Examining the relevance to product liability risks


11:55 **Networking Luncheon for Speakers and Delegates** 

## BIFURCATED TRACKS CHOOSE ONE

### Patent Track (Advanced Life Cycle Considerations)

#### 1:05 Non-Patent Exclusivity

**Eric Rogers**  
Corporate Counsel  
Genentech  
(South San Francisco, CA)

 **Deborah M. Shelton**  
Special Counsel  
Sheppard Mullin Richter & Hampton LLP  
(Washington, DC)

- The different modes and methods of exclusivity (non-patent)
  - data
  - orphan drug
  - pediatric
  - new product
- FD&C 505b2 (alternate pathway to ANDA)
- What role does the FDA play in regulating these modes of exclusivity?
- When are each of these methods sought?
- Exploring the relation and intersection of each of these methods to 180-day exclusivity

#### 2:05 Bioequivalence: What Lawyers Need to Know


 **John D. Carlin**  
Partner  
Fitzpatrick, Cella, Harper & Scinto  
(New York, NY)


- Defining bioequivalence in drugs and biologics
  - drugs v. biologics
- What an ANDA-filer must demonstrate for bioequivalence
  - bioequivalence and dosage form – oral tablet/capsule, injection, nasal sprays, topical
- How does bioequivalence relate to patents?

- patenting of bioequivalence characteristics – extended-release drug products
- bioequivalence v. Doctrine of Equivalents – what is the difference?
- arguments about bioequivalence raised in Paragraph IV patent litigation
  - infringement, copying (non-obviousness)

#### 2:50 Afternoon Refreshment Break

#### 3:05 Follow-On (Comparable or Biosimilar) Biologics

 **Donna M. Praiss**  
Partner  
Hunton & Williams LLP  
(New York, NY)

 **Jessica R. Wolff**  
Shareholder  
Heller Ehrman LLP  
(San Diego, CA)

- What are biologic drugs and why are they different for purposes of generic competition?
- When can FDA approve a follow-on biologic under current law?
- Review of the Omnitrope approval – what does it say about FDA's views on follow-ons?
- What kind of abbreviated approval route for biologics is being considered in Congress?
- Will follow-on biologics ever be interchangeable with the innovators they copy?

### Medical Device Track

#### 1:05 Medical Devices: Classification and the Essentials of the Device Premarket Review Process

 **Mark A. Heller**  
Partner  
Goodwin Procter LLP  
(Washington, DC)

#### *FDA's Risk-Based Classification Scheme for Medical Devices*

- Understanding the concept of risk-based classification
- Three main classes of medical devices
  - Class I: "low risk" devices, e.g., orthopedic blade, tongue depressor
  - Class II: "moderate risk" devices, e.g., powered wheelchair, endoscope
  - Class III: "high risk" devices, e.g., cardiac ablation catheters, drug eluting stents
- Device reclassification

#### *The Premarket Review Process for Medical Devices*

- 510(k) exemptions for low risk devices
- Premarket notification (510(k)) process
  - understanding the selection of "predicate" devices when 510(k) submissions are made and the consequences of choosing the wrong predicate
- Premarket approval (PMA) process
- The role of the Investigational Device Exemption (IDE)



## 2:05 Post-Market Requirements and Concerns for Medical Devices



**Elaine H. Tseng**  
Counsel  
King & Spalding  
(Washington, DC)

- What types of facilities must comply with FDA's establishment registration and device listing requirements?
- What is the scope of the Quality System Regulation (QSR)?
- What types of adverse events must be reported under the Medical Device Reporting (MDR) regulation?
- What kinds of field actions must be reported under the Reports of Corrections and Removals regulation?
- What other types of postmarket requirements can FDA impose on medical devices, e.g., tracking?

## 2:50 Afternoon Refreshment Break

## 3:05 Medical Device Labeling and Advertising



**Stephen D. Terman**  
Principal  
Olsson Frank Weeda Terman Bode Matz PC  
(Washington, DC)

- What are the differences between labeling and advertising and do they include websites?
- What claims can device manufacturers make regarding cleared/approved devices, devices with pending 510(k) notices, and investigational devices?
- How can device manufacturers convey information about new uses to health care professionals and/or consumers?
- What are the consequences of illegal promotion of a device?

## RECALLS AND WITHDRAWALS

## 4:05 Recall Guidance for Drugs, Biologics, and Medical Devices: What You Need To Know



**Frederick A. Stearns**  
Partner  
Keller Heckman LLP  
(Washington, DC)

- What is the FDA's recall and oversight authority?
  - from where does this authority derive?
  - overview of 21 CFR Part 7
  - guidance versus regulation
  - voluntary recalls versus mandatory recalls
  - market withdrawals and stock recoveries
- What product recalls need to be reported to FDA?
- When should a company institute a recall?
  - can new labeling or a new product warning constitute a recall?
- When should the decision be made to work with the FDA?
  - working with the FDA versus working alone?
    - what are the risks and benefits in each course of action?
- Interaction between recalls and corrective and preventive action
- What are the consequences of not instituting a recall?
- FDA seizure and injunction power
- When can product be reintroduced to the market?

## 5:00 Conference Ends

## WHO YOU WILL MEET

Attorneys for the pharmaceutical, biotech, and medical device industries whose practices focus on:

- Products liability litigation
- Patent litigation
- Patent prosecution

In-house counsel for the pharmaceutical, biotech, and medical device industries with responsibility for:

- Litigation
- Patents and IP

Securities Attorneys with practices in pharmaceuticals, biotech and device

Investment Bankers and Venture Capitalists with practices in pharmaceuticals, biotech and device

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**SPECIAL TRACKS:**

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**MEDICAL DEVICE TRACK**

Classification and Premarket Review  
Post-Market Requirements  
Labeling and Advertising

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