US Congress holds hearing on drug prices

Brad Dixon
8 February 2016

On Thursday, the House Committee on Oversight and Government Reform held a hearing on the prescription drug market, focusing on the drug pricing practices of Turing Pharmaceuticals and Valeant Pharmaceuticals. It follows the US Senate hearing on the rising prices of generic drugs held in December.

Turing and Valeant have come to the public's attention for acquiring drugs, often off-patent, and then jacking up their prices to make a hefty profit.

Much of the media coverage focused on the arrogant performance of Turing Pharmaceutical's former CEO, Martin Shkreli. He refused to answer a single question, except the correct pronunciation of his last name, invoking his Fifth Amendment right to avoid self-incrimination on advice from his high-powered lawyer, Ben Brafman.

Throughout the questioning, Shkreli was smug, laughing and smirking at questions, and at one point completely ignoring his questioners, apparently turning to the media in attendance to have his picture taken.

"I don't think I've ever seen the committee treated with such contempt," said Rep. John Mica, a Florida Republican, at the hearing.

After Shkreli was dismissed, Mica suggested that the chairman consider holding Shkreli in contempt, since none of the questions related to any criminal charges Shkreli faces. Minutes after Shkreli exited, he tweeted that the members of Congress were "imbeciles."

In addition to Shkreli, the other witnesses called to testify included Howard B. Schiller, interim CEO of Valeant Pharmaceuticals, and Nancy Retzlaff, chief commercial officer at Turing Pharmaceuticals.

Rep. Elijah Cummings, a Maryland Democrat, noted in his opening statement that the "basic strategy" of Valeant and Turing "has been to buy drugs that are already on the market, and then raise prices astronomically for a temporary period of time before other competitors enter the market."

"These companies," he continued, "did not invest funds to research or develop drugs. They bought them, jacked up the prices, took as much money as they could out of the pockets of patients, hospitals and others, and then put those funds into their own coffers."

Cummings observed that Turing, which began operations in February 2015, had revenues of $98 million in 2015. The cost of manufacturing Daraprim, which the company acquired and then hiked the price by more than 5,000 percent, was $1 million. Still, the company claimed it had $44 million in losses last year.

Legislators expressed incredulity at the claim that the company was losing money. Chairman Jason Chaffetz, a Utah Republican, chastised Retzlaff, stating, "you're not losing money, you're raking it in hand over fist as fast as you can."

Chaffetz pointed to company documents indicating plans to give 30 percent bonuses "across the board" and an October 14 agenda noting three salary increases from $250,000 to $600,000, $275,000 to $600,000, and $160,000 to $800,000.

And while Retzlaff continued to affirm that the company was losing money, Chaffetz noted that Turing had spent $23,000 to hold a party for its sales force on a yacht that included a fireworks display and an $800 cigar roller.

Cummings also pointed out the predictable excuses the drug companies would use to justify the price hikes, except now, after the collection of hundreds of thousands of pages of internal company documents, it is possible to see through the "smokescreen."

"They will try to distract from their massive price increases by talking about their R&D [Research and Development]," said Cummings. "They will downplay their massive profits by claiming that they help patients who can't afford their exorbitant prices."

In their written and spoken testimony, the company representatives did not deviate from this script.

Nancy Retzlaff said in her written testimony that Turing's decision to raise the price of Daraprim, used to treat toxoplasmosis in individuals with compromised immune systems, "reflected Turing's business goals of funding improved access programs and services for patients in need, and importantly, research and development into alternative treatments for the diseases that Daraprim® is used to treat, as well as other diseases that have been neglected by the pharmaceutical industry."

She noted that Turing offered "unbranded, nonpromotional education to allied health care professionals" to "raise awareness" and "more effectively screen patients" for toxoplasmosis. This was hardly an altruistic act. Turing currently holds a monopoly on the treatment for toxoplasmosis in the US, meaning that these "unbranded" educational materials were aimed simply at increasing the sales of Turing's drug.

Retzlaff's description of Turing's outreach to AIDS and other patient advocacy organizations was equally disingenuous. This "outreach" was merely to feel out the advocacy organizations to help the company with its public relations (PR) strategy.

As revealed by the congressional memos put together for legislators ahead of the hearing, a July 7, 2015, company presentation stated: "Many feel the number of toxoplasmosis patients is too small to stimulate a significant lobbying effort were

the cost of therapy to become an issue." And an outside consultant wrote to senior leadership at the company on September 21: "If we can get HIV/AIDS activists to 'sit this out,' we come out way ahead."

Retzlaff also claimed in her written testimony that Turing "reinvests 60 percent of its net income from the sale of Daraprim® into research and development—a figure that far exceeds industry standards." This claim was repeated in her oral testimony.

Cummings reminded Retzlaff that she was under oath, emphasizing that anything untruthful in her testimony would leave her open to perjury charges.

According to Cummings' opening report, the company reported spending $22 million on R&D. (From the data that has so far been released by legislators, it is unclear how the Turing figure of 60 percent could be anywhere close to the truth.)

Even the funds identified by Turing as R&D spending were questionable. "This money apparently went to 'donations' to unnamed entities, 'contributions to foundations,' and vague 'other research and development costs,'" wrote Cummings. "But the documents we have obtained indicate that these expenditures were just as much about PR as R&D."

"Like a Ponzi scheme," Cummings continued, "it appears that Turing may be using revenues from Daraprim to research and identify the next drug it will acquire, and then impose similarly massive price increases on future victims."

Valeant's Howard B. Schiller, who rakes in $400,000 a month, attempted to justify the price hikes imposed by his company by pointing to the Byzantine nature of the drug pricing system in the US, the availability of rebate and discount programs, and investments in R&D. At one point in his oral testimony, he was forced to concede that "in some cases we have been too aggressive in increasing prices."

His discussion of Valeant's R&D commitment in his written testimony was particularly convoluted. First, he claimed that Valeant's spending on R&D was "significant," constituting eight percent of US branded revenue.

An October 4 article in the *New York Times* put the company's R&D spending at three percent of sales, noting: "Valeant paid its five highest-paid executives 1.5 percent of sales, or $123 million, last year." The *Times* story quoted a company spokeswoman as stating that Valeant "measures its success on output (i.e., results) rather than input (i.e., spending)."

Schiller then attempted to highlight Valeant's support for R&D by equating spending on R&D with acquisitions of other companies: "From an economic standpoint, a dollar spent to buy the output from another company's R&D is the same as a dollar spent on in-house R&D."

Finally, Schiller stated that the company "purposely created a streamlined, nimble in-house R&D operation …" This final point was closer to the truth. Mike Pearson, Valeant's former CEO who stepped down due to health issues, told the Canada's *Globe & Mail* in 2013: "We had a premise that most R&D didn't give good return to shareholders."

Schiller claimed that Valeant's substantial price hikes of its heart drugs Isuprel (525 percent) and Nitropress (212 percent) were justified by the "value" they had for patients and doctors. To use more honest terms, the price was set as high as the market would bear—that is, the highest price the company could charge before seeing "increased pressure from rebates from the payers, decreased sales volumes from hospitals, increased substitution of alternative products, and heightened competition from new generic or branded drugs," said Schiller.

Price-gouging in the pharmaceutical industry goes well beyond Valeant and Turing. In his opening statement, Cummings also singled out Lannett, Pfizer, Horizon, Teva, Amphastar, Allergan and Endo. This list could be substantially expanded.

While there was plenty of political grandstanding and outrage expressed at Turing and Valeant by legislators at the hearing, this was all for show. The primary concern is to protect the profits of the entire pharmaceutical industry and stave off public opposition.

"I do believe in the right to profit, I think that profit is a motivator that does a lot of good," emphasized Chaffetz at the hearing. Other legislators repeated this sentiment.

What worries the political establishment, both Democrats and Republicans, is that the more egregious actions of the "pharma-hedge fund hybrids" (to quote an outside consultant for Turing) like Valeant and Turing might threaten the profiteering of the more "responsible" drug companies. The minor reforms being pursued by politicians of both parties—with even the semi-fascistic Donald Trump voicing support for Medicare negotiating drug prices—have this concern in mind.

A poll conducted in August by the Kaiser Family Foundation found that 72 percent of respondents felt that drug prices were too high, while 74 percent felt that drug companies put profits before people. Pharmaceutical companies, the survey found, were viewed favorably by only 42 percent of the respondents—about the same level as those who have positive views of the oil industry (40 percent).