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**Introduction to Medical Device Law and Regulation**

**March 2-4, 2021**

**Tuesday, March 2**

**12:00 PM FDLI Welcome and Announcements**

**Khara L. Minter**, Assistant Director, Training Programs, FDLI

**12:05–1:05 PM I. Overview of Medical Device Law and Regulation and Organizational**

**Structures**

**Learning Objectives**

* Learn the current regulatory framework and major statutory underpinnings for medical device regulation
* Discuss the federal agencies that play a role in regulating medical devices
* Address the state role in regulation

**Sousan Sheldon**, Independent Consultant, EAS Consulting Group

1. **Sources of Law**
   1. Federal Food, Drug, and Cosmetic Act of 1938 (FDCA)
   2. Public Health Service Act of 1944 (PHSA)
   3. Administrative Procedure Act of 1946 (APA)
   4. Radiation Control for Health and Safety Act of 1968 (RCHS)
   5. 1976 Medical Device Amendments
   6. Safe Medical Devices Act of 1990 (SMDA)
   7. Mammography Quality Standards Act (MQSA)
   8. Food and Drug Administration Modernization Act of 1997 (FDAMA)
   9. Food and Drug Administration Amendments Act of 2007 (FDAAA)
   10. Patient Protection and Affordable Care Act of 2010 (PPACA)
   11. Food and Drug Administration Safety and Innovation Act of 2012 (FDASIA)
   12. 21st Century Cures Act (2016)
   13. Medical Device User Fee Reauthorization Legislation (including FDARA)
   14. Regulations (21 CFR § 801 et seq.)
   15. Guidance documents and other policy pronouncements
   16. FDA Website
   17. Case Law
2. **Regulation as a Medical Device**
   1. Definition of “Device”
      1. Determining if a product is a Device; Section 513(g) Process and informal inquiries
      2. Gray Area Products (e.g. physical vs. chemical reaction, medical software, wellness products, exercise vs. rehabilitation, impact of 21st Century cures, software as a medical device (SAMD), etc.)
      3. In Vitro Diagnostics (e.g., history pre-device regulations)
      4. Laboratory-developed tests (LDTs) status
      5. Practice of medicine
   2. Device Classification and Examples
3. Definitions of Class I, II, III
4. General controls and specific controls
   1. Breakthrough Devices and the StEP Program
   2. Combination Products

a. Combination Products Regulations (21 CFR Parts 3 & 4)

b. Definitions

c. Primary Mode of Action (PMOA)

d. Office of Combination Products (OCP)

e. Requests for Designation/Classification Determinations

f. Guidance Documents

1. Pre-RFD and RFD submissions
2. Good Manufacturing Practices/Quality Systems Regulation
3. Post Marketing Safety Reporting
4. Inter-center Agreements
5. **Center for Devices and Radiological Health (CDRH), Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS)**
   1. Office of Product Evaluation and Quality (selected offices)
   2. Immediate Office
   3. Quality and Analytics Staff
   4. Clinical and Scientific Policy Staff
   5. Regulation, Policy and Guidance Staff
   6. Compliance and Quality Staff
   7. Operations Staff
   8. Office of Regulatory Programs

a. Division of Regulatory Programs 1 (Submission Support)

b. Division of Regulatory Programs 2 (Establishment Support)

c. Division of Regulatory Programs 3 (Market Intelligence)

* 1. Office of Clinical Evidence and Analysis
  2. Office of Health Technology 1 (OHT1: Ophthalmic, Anesthesia, Respiratory, ENT and Dental Devices)
  3. Office of Health Technology 2 (OHT 2: Cardiovascular Devices)
  4. Office of Health Technology 3 (OHT 3: Reproductive, Gastro-Renal, Urological, General Hospital Device and Human Factors)
  5. Office of Health Technology 4 (OHT 4: Surgical and Infection Control Devices)
  6. Office of Health Technology 5 (OHT 5: Neurological and Physical Medicine Devices)
  7. Office of Health Technology 6 (OHT 6: Orthopedic Devices)
  8. Office of Health Technology 7 (OHT 7: In Vitro Diagnostics and Radiological Health - OIR)
  9. Office of Science and Engineering Laboratories
  10. Division of Industry and Consumer Education (DICE)

1. **FDA’s Office of Regulatory Affairs (ORA)**
   1. Office of Medical Device and Radiological Health Operations (OMDRHO)
   2. Office of Criminal Investigation (OCI)
2. **Office of the Chief Counsel (OCC); U.S. Department of Justice, Office of Consumer Litigation – FDA’s Attorneys**
3. **Federal Trade Commission**
4. **Federal Communications Commission**
5. **State Involvement in Medical Device Regulation**
6. **Working with FDA – How and When to Communicate with FDA**

**1:05–1:15 PM Break**

**1:15–2:30 PM II. Premarket Notification 510(k) and De Novo Requests**

**Learning Objectives**

* Recognize the legal basis and content for a 510(k)
* Learn how to strategize for a 510(k) submission
* Understand FDA’s 510(k) review process
* Define substantial equivalence and predicate devices
* Learn what a de novo request is and when it will be accepted

**Michael Kasser**, Director of Regulatory Sciences, Hogan Lovells US LLP

1. **Overview**
2. **What is a 510(k)?**
3. **What is a Predicate Device?**
4. **What Does Substantial Equivalence Mean?**
5. **How to Strategize for a 510(k) Submission**
6. **FDA 510(k) Review Process**
7. **Special 510(k) When to Submit**
8. **Use of Standards in a 510(k) and Abbreviated 510(k)s**
9. **Confidential, Proprietary, and Trade Secret Information**
10. **Third Party Review of a 510(k)**
11. **User Fees for 510(k) Submissions**
12. **Anticipated Changes to the 510(k) Process**
13. **Modifications to a Legally Marketed Device**
14. **What is a De Novo Request?**
    1. Request for an evaluation of automatic class III designation for products that

a. Do not have a predicate device;

b. Do not have an existing classification regulation;

c. Have been determined NSE; or,

d. Do not have an existing PMA

* 1. Acceptance Review assesses whether the request contains all necessary elements (see De Novo Acceptance Checklist)
  2. Substantive Review assesses the adequacy of information supporting granting the request
  3. A De Novo request should establish the risk profile and benefits of the device, include all information possible regarding the safety and effective of the device, and provide valid scientific evidence demonstrating the device performance characteristics, along with providing proposed special controls
  4. Medical Device De Novo Classification Process

**2:30–2:40 PM Break**

**2:40–3:40 PM III. Registration and Listing**

**Learning Objectives**

* Learn the who, how, and when for medical device establishment registration and product listing
* Understand the consequences for failing to register an establishment and list products

**Serra J. Schlanger**, Director, Hyman, Phelps & McNamara, PC

**A. Who Must Register/List?**

**B. How to Register/List**

**C. When to Register/List**

**D. Updates to Device Listing**

**E.** **U.S. Agents**

**F. Exemptions**

**G. User Fees**

**H. Intersection with State Manufacturer/Wholesaler Laws**

**I. Misbranding**

**J. Adulteration**

**3:40–3:50 PM Break**

**3:50–5:00 PM IV. Clinical Investigations: Investigational Device Exemption (IDE),**

**Institutional Review Boards (IRBs) and Informed Consent**

**Learning Objectives**

* Understand the definition of Investigational Device Exemption (IDE)
* Determine when an IDE is needed
* Learn the components of Institutional Review Boards (IRBs)
* Recognize the required elements of informed consent

**Mahnu Davar**, Partner, Arnold & Porter LLP

1. **Overview**
2. **‘Significant Risk’ (SR) vs. ‘Non-significant Risk’ (NSR) Devices**
3. **Exemptions**
4. **Pre-Submission Meetings and Agreement Meetings**
5. **Submitting an IDE**
   1. Contents of an IDE application
   2. Amendments
   3. Acceptance of data from clinical trials conducted outside of the U.S.
   4. Clinical Investigator selection
6. **FDA Actions (IDE decisions; clinical holds)**
7. **IDE Supplements**
8. **Abbreviated Requirements (NSRD study)**
9. **Treatment Use and Compassionate Use IDE’s**
10. **ClinicalTrials.gov**
11. **Institutional Review Board (IRB)**
12. Composition
13. Operations
14. Records
15. Reports
16. NSR determination
17. Ongoing review

**L. Informed Consent**

* + - 1. Required elements
      2. Additional elements
      3. Waivers
      4. Emergency use
      5. Abbreviated requirements (update on recent regulation/guidance)

**M. Clinical Trial Agreements**

**N. Prohibition on Promotion/Commercialization**

**O. Common Rule**

**Wednesday, March 3**

**12:00 PM FDLI Welcome and Announcements**

**Khara L. Minter**, Assistant Director, Training Programs, FDLI

**12:05–1:05 PM V. Clinical Investigations: Sponsor/Investigator Responsibilities and Compliance Issues**

**Learning Objectives**

* Understand the responsibilities of a clinical trial sponsor
* Learn what biorearch monitoring (BIMO) looks for in a clinical trial inspection
* Discuss the consequences of investigator disqualification

**Anisa Mohanty**, Counsel, McDermott Will & Emory LLP

1. **Bioresearch Monitoring (BIMO)**
2. **Clinical Trial Sponsor’s Responsibilities**
   1. Financial Disclosure by Clinical Investigations
   2. Financial disclosure requirements
3. **Adverse Event Reporting (AER)**
4. **Investigator Restriction/Disqualification**
5. **Recent Enforcement Actions**
6. **Ethical Issues**
7. IRB actions
8. Incentives for enrollment
9. Vulnerable populations, real world evidence (RWE), use of foreign clinical data

**G. IRB responsibilities for reviewing qualifications of investigator,**

**adequacy of research sites, and the determination of whether an**

**IND/IDE is needed**

**1:05–1:15 PM Break**

**1:15–2:15 PM VI. Premarket Approval Application (PMA); Humanitarian Device**

**Exemption (HDE)**

**Learning Objectives**

* Learn the required elements and FDA review considerations for Premarket Approval (PMA) applications
* Understand the required contents and FDA review considerations for Humanitarian Device Exemption (HDE) applications
* Recognize post-approval and post-marketing considerations for approved PMAs and HDEs

**Deborah Baker-Janis**, Senior Director, NSF International

1. **Purpose**
2. **Content of a PMA**
3. Application requirements
4. Clinical data and Real World Evidence
5. Modular PMA
6. Referencing Device Master Files
7. **PMA Approval Process**
8. **PMA Amendments**
9. **PMA Supplements**
10. **Meetings with FDA**
11. **Advisory panels**
12. When panels are convened
13. Role of panel
14. Meeting procedures

**H. Humanitarian Device Exemption (HDE)**

**2:15–2:30 PM Break**

**2:30–3:30 PM VII. Coverage, Coding and Payment – Collaboration Between FDA and the Centers for Medicare and Medicaid Services (CMS)**

**Learning Objectives**

* Gain a clearer context of the Centers for Medicare and Medicaid Services (CMS) relationship with FDA – specifically regarding reimbursement and approval
* Distinguish the data needs of CMS from FDA
* Learn practical tips to link FDA with reimbursement

**Preeya Noronha Pinto**, Partner, King & Spalding LLP

1. **Harmonizing FDA and CMS Requirements**
   1. 510(k)
   2. IDE/PMA
   3. Parallel Review by FDA and CMS
   4. Reimbursement implications:
2. Healthcare Common Procedure Coding System (HCPCS), product codes and picking the predicate device
3. Coverage of IDE devices
4. National Coverage Decisions (NCD)
5. **Safety and Effectiveness ≠ Reasonable and Necessary**
6. **Distinguishing FDA Data Needs from CMS Data Needs**
7. **CMS’ Policy on Coverage for Clinical Trials and Research**
8. **The MCIT Pathway for Breakthrough Devices**
9. **Practical Tips to Link FDA with Reimbursement**
10. Selecting the route for approval/clearance
11. Structuring clinical trials
12. Labeling to support coverage and reimbursement

**3:30–3:45 PM Break**

**3:45–5:00 PM VIII. Post Marketing Issues**

**Learning Objectives**

* Learn how medical device manufacturers are required to evaluate and report post-market adverse events and product problems
* Recognize when to conduct a recall and how corrections and removals are reported to the FDA
* Understand how medical device manufacturers are required to monitor device performance following clearance or approval

**Ian M. Pearson**, Associate, Jones Day

1. **Adverse Events/Product Problems**
   1. Complaint handling
   2. Medical Device Reporting (MDR)
      1. Purpose
      2. Definitions
      3. Requirements
      4. Reporting forms
      5. Examples
      6. Electronic MDR
2. **Product Recalls and Part 7/Reports of Corrections and Removals under Part 806**
3. **Product Servicing and Refurbishing**
4. **Unique Device Identifiers (UDI) -- Regulations and Implementation**
   1. Update on which classes of devices require UDI and where there has been an extension to comply
5. **Safety Alerts and Physician Communication/Public Health Notification**
6. **Ongoing Monitoring of Device Performance**
   1. Conditions of PMA approval
   2. Statutory programs
      1. Device tracking
      2. Postmarket surveillance under Section 522
      3. Possible Recession of PMA approval Due to Non-Adherence to Post Market Study Conditions
   3. FDA signal escalation

**Thursday, March 4**

**12:00 PM FDLI Welcome and Announcements**

**Khara L. Minter**, Assistant Director, Training Programs, FDLI

**12:05–1:05 PM IX. Enforcement and Compliance**

**Learning Objectives**

* Learn the types of actions that may trigger FDA enforcement
* Recognize the tools available to FDA to enforce compliance
* Understand the fundamental considerations for FDA inspections

**Frederick A. Stearns**, Partner, Keller and Heckman LLP

1. **FDA Jurisdiction**
   1. Device
   2. Interstate commerce
2. **Prohibited Acts and Penalties**
   1. Prohibited Acts – FDCA Section 301
      1. Adulteration – FDCA Section 501
      2. Misbranding – FDA Section 502
   2. Penalties
      1. Administrative sanctions
3. Warning and untiled letters
4. Civil money penalties
5. Cease distribution and notification orders and mandatory recall
6. Other Section 518 remedies
7. Administrative detention
8. Banned Devices
9. Import detention/alerts/refusal of admission
10. FDA’s use of publicity
    * 1. Seizure
      2. Injunction
      3. Criminal Penalties
11. **FDA Inspection**
    1. Scope
    2. FDA procedures
12. Investigations Operations Manual (IOM)
13. Types of inspections
14. Compliance program – levels of inspection
15. Inspection opening/closure
16. Credentials
17. Notice of inspection FORM FDA 482
18. Limits, manner
19. FORM FDA 483
20. Discussion with Management
21. Annotated 483
    1. Facility/Individual
22. Responsibility and rights
23. Company or corporate policies/inspection SOP
24. Affidavits
25. Photography
26. Electronic document requests
27. Inspection management
28. Daily briefings
    1. Inspection Refusal
29. FDA criteria for assessing refusal or obstruction
30. Consequences under the FDCA and other authorities
    1. Possible Outcomes
31. No FORM FDA 483
32. Good news/Classification as NAI
33. FORM FDA 483
34. Response within timeframe
35. Classification as VAI or OAI
36. Establishment Inspection Report (EIR)
37. FDA administrative and enforcement options
38. **Enforcement Process**
    1. Untitled letters
    2. Warning letters/Untitled letters

a. Document response with written response

b. Possible FDA Regulatory meeting

* 1. Seizures
  2. Injunction/Consent Decree
  3. Criminal prosecution

1. **Other Enforcement/Remedial Possibilities**
   1. DOJ and/or US Attorneys enforcing FDCA
   2. False Claims Act
   3. Office of Inspector General
   4. Federal Trade Commission (FTC)
   5. Securities and Exchange Commission
   6. State enforcement
2. Civil (state FDCA; consumer protection; etc.)
3. Criminal
4. Tort Liability

**1:05–1:15 PM Break**

**1:15–2:35 PM X. Promotion and Advertising**

**Learning Objectives**

* Summarize FDA’s authority concerning medical device promotion and advertising
* Define key statutory definitions of “label” and “labeling” and “false and misleading”
* Recognize off-label issues, claims substantiation, and Direct-to-Consumer (DTC) Advertising

**Suzanne Levy Friedman**, Senior Associate, Hogan Lovells US LLP

1. **Scope of FDA Authority**
2. “Label” and “Labeling”
3. Advertising
4. FDA and FTC Jurisdictions
5. FDA and SEC Jurisdictions
6. **“False or Misleading”; Misbranding; Adulteration**
7. **Marketing and Promotion of Unapproved Devices**
8. **Off-label Issues**
9. Off-label use and practice of medicine
10. General vs. specific intended uses and evolving FDA guidance
11. Off-label promotion
12. Amarin, Vascular Solutions and other key decisions
13. Dissemination of clinical and health economic information regarding unapproved uses of approved products
14. **Claims Substantiation**
15. Generally
16. Comparative claims
17. “Establishment” claims
18. **Direct-to-Consumer (DTC) Advertising**
19. **Monitoring Compliance**
20. Tradeshows
21. Scientific Forums
22. Detailers
23. Internet/Social Media
24. **FDA Enforcement vs. Non-FDA Enforcement**
25. False Claims Act and Qui tam Actions
26. Internet and social media activity
27. **Training Sales Representatives**
28. **Co-marketing and Licensing Agreements – Specifying Responsibilities**

**2:35–2:50 PM Break**

**2:50–3:50 PM XI. Manufacturing and Quality System (QS) Regulation**

**Learning Objectives**

* Identify the purpose of the Quality System Regulation (QSR)
* Learn key requirements of the QSR
* Understand why and how to mitigate QSR noncompliance

**Allison Fulton**, Partner, Sheppard Mullin Richter & Hamilton LLP

1. **History, Purpose, and Scope**
2. **Regulatory Requirements for Device Manufacturing and Distribution**
3. **Quality System and FDA Expectations**
4. Management controls
5. Quality audit and personnel
6. Design controls
7. Production and process controls
8. Complaint handling
9. Corrective and preventive action (CA/PA)
10. Records, documents and change control
11. Equipment and facilities controls
12. Materials controls
13. **Third Parties in Manufacturing and Quality Operations**
14. Quality Agreements
15. Contract specification developers
16. Contract manufacturers, packagers, labelers
17. Component suppliers
18. **Similarities/Differences between International Standards Organization (ISO) and QSR**

**3:50–4:00 PM Break**

**4:00–5:00 PM XII. International Issues**

**Learning Objectives**

* Understand the legal framework concerning imports and exports of medical devices
* Recall the basis for approved and unapproved devices
* Examine the importation process

**Sarah H. Stec**, Senior Counsel, Medical Device Regulatory Law, Johnson & Johnson

1. **Legal Framework**
2. FDCA, Chapter VIII, Section 801 and 802
3. Food and Drug Export Reform and Enhancement Act of 1996 (FDERA)
4. **Exports**
5. Approved devices
6. Unapproved devices
7. Export under Section 801 (e)(1)
8. Export under Section 802
9. Export under Section (e)(2)
10. Investigational devices
11. Certificate of Exportability (COE); Certification for Foreign Government (CFG)
12. **Imports**
13. Roles of FDA and Customs and Border Protection (CBP); Inspections
14. Import alerts and detentions
15. Reconditioning or destruction
16. Import for export

**5:00 PM Adjournment**

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