American Medical Association

Physicians dedicated to the health of America

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Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

RE: Guidance for Industry: Qualified Health Claims in the Labeling of Conventional Foods and Dietary Supplements [Docket No. 02N-0515]

Dear Food and Drug Administration:

On behalf of the American Medical Association (AMA), I am pleased to offer comments to the Food and Drug Administration (FDA) regarding its *Guidance for Industry: Qualified Health Claims in the Labeling of Conventional Foods and Dietary Supplements* (67 Fed. Reg. 245, pp. 78002-78004 [December 20, 2002]). Specifically, the AMA would like to express its opposition to the FDA's intent to allow qualified health claims in the labeling of conventional foods. The AMA also wishes to re-affirm its longstanding concerns about the inadequate regulation of dietary supplement products and to restate its views on health claims made for these products.

AMA Opposes Qualified Health Claims in the Labeling of Conventional Foods

Upon review of the FDA's December 2002 *Guidance for Industry: Qualified Health Claims in the Labeling of Conventional Foods and Dietary Supplements*, it appears that a primary purpose of this new guidance is to allow qualified health claims in the labeling of conventional foods. This expands the use of qualified health claims beyond dietary supplement products; FDA proposed to allow such claims for dietary supplements in October 2000 as a means to address the *Pearson* court decision (see 65 Fed. Reg. 195, pp. 59855-59857 [October 6, 2000]). In an accompanying press release, the FDA contends allowing qualified health claims for conventional foods will provide better health information for consumers.

The AMA opposes the use of qualified health claims in the labeling of conventional foods for the following three reasons. First, the AMA does not believe the FDA has the regulatory authority to allow qualified health claims in the labeling of conventional foods because this decision is inconsistent with current federal law. The relevant section of the Food, Drug & Cosmetic Act (FDCA) [21USC343(r)(3)(B)(i)] states:

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> The Secretary shall promulgate regulations authorizing claims of the type described in subparagraph (1)(B) only if the Secretary determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is **significant** (emphasis added) scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

While the above section of the FDCA does not apply to infant formulas, medical foods, and dietary supplements [see 21USC343(r)(5)], there does not appear to be any exception for conventional foods. Thus, the AMA believes that the FDA lacks the authority to lower the significant scientific agreement standard by which health claims in the labeling of conventional foods are to be judged.

The AMA also strongly opposes the FDA's decision to allow a lower standard – the so-called weight of the scientific evidence standard – to be used in deciding whether a health claim can be placed on the labeling of a conventional food product.

Based on current law [21USC343(r)(3)(B)(i)] and regulation [21CFR101.14(c)], and as discussed above, health claims for conventional foods must meet a significant scientific agreement standard to be approved by the FDA to be placed on a product label. In its December 1999 *Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements*, the FDA states:

> The significant scientific agreement standard is intended to be a strong standard that provides a high level of confidence in the validity of a substance/disease relationship. Significant scientific agreement means that the validity of the relationship is not likely to be reversed by new and evolving science, although the exact nature of the relationship may need to be refined...The assessment of significant scientific agreement then derives from the conclusion that there is a sufficient body of sound, relevant scientific evidence that shows consistency across different studies and among different researchers and permits the key determination of whether a change in the dietary intake of a substance will result in a change in a disease endpoint.

This 1999 Guidance then goes into substantial detail about the relative value of various types of scientific studies (e.g., the "gold standard" of interventional studies is the randomized controlled clinical trial) and how the FDA will evaluate all of the evidence to determine the strength of the substance/disease association.

The AMA believes the significant scientific agreement standard is appropriate for health claims on conventional foods; this standard provides reasonable assurance to a consumer that the health claim is accurate because the claim is supported by a significant body of scientific evidence. In contrast, under its December 2002 Guidance, the FDA would allow qualified health claims in the labeling of conventional foods based on a lesser "weight of

the scientific evidence standard." Under this standard, if the scientific evidence in support of the health claim outweighs the scientific evidence against the claim, and consumer health and safety are not threatened, then the FDA will use its enforcement discretion and allow a product to have a qualified health claim. FDA clearly states this is a lesser standard than significant scientific agreement. Moreover, "FDA expects that, as scientific inquiry into the role of dietary factors in health proceeds, particular qualified health claims will be further substantiated, while for other qualified health claims the 'weight of the scientific evidence' will shift from 'more for' to 'more against.' It is conceivable, therefore, that the information provided to consumers through qualified health claims in food labeling could change over time."

The AMA believes a "weight of the scientific evidence standard" should not be used because the evidence to support the qualified health claim under this standard would be equivocal. For example, beta-carotene was shown to lower the frequency and severity of experimental cancer induced in animals. In addition, high intakes of fruits and vegetables rich in carotenoids were associated with a reduced risk of developing cancer in humans. Thus, under the weight of the scientific evidence standard, one might expect FDA to approve a qualified health claim that fruits and vegetables rich in beta-carotene reduce the risk of cancer. However, a subsequent randomized, controlled clinical trial assessing the effect of beta-carotene on the development of lung cancer in high-risk Finnish men with a history of smoking found a significant increase in the rate of lung cancer among the beta-carotene supplemented group. Thus, the AMA does not believe that conventional foods, which are consumed by the entire population of the United States, should be allowed to carry health claims that have a reasonable chance of being erroneous. This is poor public health policy. It is worthy to note that the FDA rejected the beta-carotene-cancer risk health claim based on the significant scientific agreement standard (see FDA's December 1999 Guidance).

The AMA also opposes qualified health claims in the labeling of conventional foods because such claims are not helpful to, and actually could confuse consumers. An educated consumer will not know whether to believe or not to believe the claim. An uneducated consumer may just accept that the qualified health claim is valid, and more likely will not understand it. The AMA obtained the list of currently FDA-authorized "qualified" claims for dietary supplements from the FDA web site (http://www.fda.gov/oc/nutritioninitiative/list.html). Two acceptable qualified health claim statements are listed for folic acid-neural tube defects, omega-3 fatty acids-coronary heart disease, and B vitamins-coronary heart disease, respectively. For example,

> As part of a well-balanced diet that is low in saturated fat and cholesterol, Folic Acid, Vitamin B6, and Vitamin B12 may reduce the risk of vascular disease. FDA evaluated the above claim and found that, while it is known that diets low in saturated fat and cholesterol reduce the risk of heart disease and other vascular diseases, the evidence in support of the above claim is inconclusive.

The AMA cannot understand why having this qualified health claim on the label of a conventional food product would be helpful to a consumer. While the individual

sentences may be factually correct, taken in total, the message is "we have no idea if B vitamins reduce the risk of heart disease." Moreover, including reference to "vascular" disease and to "saturated fat" and "cholesterol" in a qualified health claim on B vitamins-coronary artery disease only will add to consumer confusion. The FDA is supposed to protect the health of the public. As part of this protection, consumers expect the FDA to assure them that the food and medical products that they consume are safe, and that the information accompanying the product is accurate and helpful. While the qualified health claims approved to date by FDA may be factually accurate, the AMA strongly believes these claims are not helpful to consumers in selecting products to improve their health. In an era when consumers are constantly being bombarded with questionable health information (e.g., via television, the Internet, and other avenues), the FDA should not be facilitating consumer confusion by allowing equivocal qualified health claims on conventional foods.

Finally, the AMA's interpretation of the December 2002 Guidance is that FDA will allow health claims in the labeling of conventional foods if either the significant scientific agreement standard is met or, for a qualified health claim, if the weight of the scientific evidence standard is met. In our opinion, this will only further confuse consumers. For any given claim, consumers will not know how valid the claim is because they will not know what the level of scientific evidence is to support the claim.

AMA Concerns about the Regulation of Dietary Supplement Products

The AMA remains deeply concerned about the quality, safety, and efficacy of dietary supplement products, especially herbal remedies. The AMA has communicated its concerns to the FDA in numerous letters over the past four years and has testified before Congress on this issue.

The AMA believes that the primary problem is the "Dietary Supplement Health and Education Act of 1994" (DSHEA), which fails to provide for adequate regulatory oversight of dietary supplement products by the FDA. In that regard, our House of Delegates (AMA's policy-making body) has asked the AMA to work with Congress to modify DSHEA to require that dietary supplements and herbal remedies, including those products already in the marketplace, undergo FDA approval for evidence of safety and efficacy, meet standards established by the United States Pharmacopeia (USP) for identity, strength, quality, purity, packaging, and labeling, and meet FDA postmarketing requirements to report adverse events, including drug interactions.

In the absence of modifications to current federal law, the AMA believes the FDA must aggressively regulate dietary supplements to the fullest extent permitted by law, in order to fulfill its obligation to protect the health of the American public. For example, in prior correspondence, the AMA has stated that the FDA must ensure that dietary supplements are of high quality and have a safety profile that warrants direct purchase by consumers without health professional supervision. To assure dietary supplement quality, the AMA has asked the FDA to rely on the USP to set standards for identity, strength, quality, purity, packaging, and labeling and, to develop specific Good Manufacturing Practices

(GMP) regulations for these products. To assure safety, the AMA has asked the FDA to adopt a vigorous Adverse Event Reporting program for dietary supplements and to take necessary action when safety problems are identified. This would include requiring dietary supplement manufacturers to include safety information (i.e., warnings, contraindications, precautions, and adverse reactions) on the labels of dietary supplements to protect consumers.

AMA Views on Health Claims in the Labeling of Dietary Supplements

The AMA believes that the best regulatory approach for protecting and promoting the public health is for the FDA to mandate a single standard for health claims that applies to both conventional foods and to dietary supplements. This continuity is necessary to prevent confusion among consumers and to allow them to intelligently and confidently identify conventional food and dietary supplement products that may reduce the risk of a disease or health-related condition.

The significant scientific agreement standard, as described in the FDA's December 1999 *Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements*, appears adequate, provided a health claim only refers to reducing the risk of a disease or health-related condition in the general population or a significant subpopulation (e.g., "diets low in saturated fat and cholesterol may reduce the risk of heart disease" [21 CFR 101.75]). For all other disease-related claims, a dietary supplement should be considered a drug (see Sec. 201(g)(1)(B) of the Food, Drug & Cosmetic Act) and satisfy the more rigorous substantial evidence standard that applies to drugs (see Sec. 505(d) of the Food, Drug & Cosmetic Act).

The AMA vigorously opposes the lesser weight of the scientific evidence standard for dietary supplement health claims, as originally proposed by the FDA in October 2000 and re-affirmed by the Agency in its December 2002 Guidance. Consistent with our views on qualified health claims for conventional foods, to allow qualified health claims for dietary supplements based on preliminary or equivocal evidence fails to protect the health of the American people. The FDA should change its policy and adamantly insist that failure to meet the significant scientific agreement standard, as described in the December 1999 Guidance, satisfies the circumstances under the *Pearson* opinion in which FDA is justified in banning certain health claims. Specifically, the AMA believes that if there is insufficient evidence to support a health claim based on the significant scientific agreement standard, then this should be interpreted as evidence against the claim outweighing evidence for the claim and justifies denial of the claim.

The AMA also vigorously opposes the expansion of health claims for dietary supplements to include effects on an existing disease. Despite its shortcomings, the DSHEA was very explicit in distinguishing a dietary supplement from a drug. DSHEA clearly states that dietary supplements are deemed to be foods except for purposes of Sec. 201(g) of the FDCA. Dietary supplements are not intended to diagnose, cure, mitigate, treat, or prevent any disease. Thus, if a manufacturer wishes to make a claim that its product is intended to diagnose, cure, mitigate, treat, or prevent a disease, the product would have to be classified

as a drug and be subject to the drug regulatory process (i.e., require FDA review and approval prior to marketing and meet the substantial evidence standard).

In prior correspondence, the AMA has urged the FDA to ensure that consumers readily understand the differences between drug products and dietary supplement products (particularly herbal remedies) so each type of product is used appropriately. Drug products have a known benefit/risk ratio based on rigorous scientific study and premarket regulatory review by the FDA. In contrast, knowledge about the benefit/risk ratio of dietary supplements is far less certain. Dietary supplement products should not be used inappropriately by consumers to treat diseases or delay individuals with diseases from obtaining a diagnosis and appropriate drug treatment from a physician.

Thus, it is imperative that the FDA not allow health claims for dietary supplements to include effects on an existing disease because it will blur the distinction between a drug and a dietary supplement and elevate the level of confusion among consumers regarding appropriate therapies. Such an action by the FDA clearly would be in conflict with its mission to protect the health of the public. The AMA believes that health claims for dietary supplements should be limited to reducing the risk of a disease or health-related condition in the general population (or a significant subpopulation).

The AMA appreciates the opportunity to comment on these important issues and would be pleased to discuss its concerns and views regarding health claims for conventional foods and dietary supplements more fully with the FDA.

Sincerely,

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