



# NHSDLC Fall 2020: Sample Con Case

Academic Committee of the NHSDLC\*

September 2020

We stand **CON** on the resolution, “Resolved Countries should not impose price controls on the pharmaceutical industry”. Our sole contention is **market failure**.

## Market Failure

**First**, the drugs market is not a free market and price controls are the best policy to regulate it. As Jared **Bernstein** writes in 2018, “[...] the problem we face is [...] we’re imposing a market structure on something that should be a public good [...] Martin Shkreli, the former hedge fund manager who, upon acquiring the rights to a critical drug for patients with life-threatening infections, raised its price to \$750 from \$13.50 per tablet. Any objective person would view [this] as a highly distorted market — prices don’t rise 5,500 percent overnight in a functioning market.”<sup>1</sup>

**Second**, the drug industry has a mix of odd and perverse incentives that cause spiking prices as Xenia Shih **Bion** writes in 2018. [...] a maze of “odd and perverse incentives” allows more expensive drugs to receive more favorable reimbursement positions that reward doctors and hospitals for prescribing those drugs. The federal law also attempts to encourage competition by allowing other companies to manufacture generic versions of a drug once its patent expires. But drug makers have

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\*Published by the National High School Debate League of China (NHSDLC). To report discrepancies, please email the corresponding author, Sunny Mewati at [sunny@syieducation.com](mailto:sunny@syieducation.com)

<sup>1</sup>Bernstein, Jared. “Should the Government Impose Drug Price Controls?” The New York Times, The New York Times, 2018, [www.nytimes.com/roomfordebate/2015/09/23/should-the-government-impose-drug-price-controls/drug-price-controls-are-vital-in-a-market-thats-not-free](http://www.nytimes.com/roomfordebate/2015/09/23/should-the-government-impose-drug-price-controls/drug-price-controls-are-vital-in-a-market-thats-not-free).

numerous tactics up their sleeves to thwart generic competition. They can introduce incremental changes to a drug to extend a patent. They can even hatch costly but legal “pay for delay” agreements with generic drug companies to block competition. Because of this [...] In the short term, society pays more in the form of higher prices [...] In the long term, society pays more in the form of fewer competitors to offer lower-priced drugs.

The short-term cost is evident in the historical pricing of EpiPen, which injects the drug epinephrine to halt a life-threatening allergic reaction known as anaphylactic shock. EpiPen is a product of the American pharmaceutical company Mylan. According to *The Lancet Child Adolescent Health*, a pack of two EpiPens cost \$100 when Mylan purchased the brand in 2007. By 2016, the cost of a pack had increased six-fold even though the manufacturing costs remained the same. Mylan responded to backlash over the high drug costs by introducing a generic version of the EpiPen for \$300. Then, in August 2018, the Food and Drug Administration (FDA) approved a generic version of the EpiPen from Teva Pharmaceutical. FDA Commissioner Scott **Gottlieb**, MD, said, “This approval means patients living with severe allergies who require constant access to life-saving epinephrine should have a lower-cost option.” [...] then Teva announced the cost of its generic epinephrine auto-injector: \$300, the same as Mylan’s generic EpiPen.

Ed **Silverman** wrote in *STAT*. The pricing is a clear example of the long-term cost society pays when there are few competitors in the drug market. When pressed on the not-quite-bargain cost of Teva’s generic drug, Gottlieb said, “We have found that having three or more generic competitors brings prices down more sharply than with only one or two generic competitors.”<sup>2</sup>

**Last**, drug monopolies result in steep launch prices for drugs **unrelated to their value**. As Dean **Baker** of the Center for Economics and Policy Research writes in 2016, “[...] The free market doesn’t have patent monopolies. The monopoly power provided by a patent is a government policy to promote innovation. There are problems with patent monopolies in many areas, but nowhere is the issue worse than with prescription drugs.

Patent protected drugs are often essential for people’s health or even their lives. Allowing a drug company to have a monopoly where it can charge whatever it can force the individual, or more typically the insurer or the government, to pay makes little sense. This is like negotiating the pay of firefighters at the point where they show up at your burning house with your family inside. This would give us much worse fire service and many very wealthy firefighters.

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<sup>2</sup>Xenia Shih Bion (engagement specialist at CHCF, where she oversees social media and analytics to amplify the programmatic work of the foundation). “The Human Cost of Soaring Prescription Drug Prices.” California Health Care Foundation. 30 November 2018. <https://www.chcf.org/blog/the-human-cost-of-soaring-prescription-drug-prices/>

A monopoly that allows drug companies to sell their drugs at prices that can be hundreds of times the free market price has all the problems economics predicts when governments interfere with the market. Drug companies routinely mislead doctors and the public about the safety and effectiveness of their drugs to increase sales. The cost in terms of bad health outcomes and avoidable deaths runs into the tens of billions of dollars every year.”<sup>3 4</sup>

**Furthermore**, Madeline **Towmey** explains in 2019, “[...] many specialty drugs enter the market at unreasonably high prices. For example [...] Amgen initially released its cholesterol drug Repatha at a list price of \$14,100 per year. However, the Institute for Clinical and Economic Review (ICER) found that, given the availability of lower-cost treatments with similar effects, the drug should cost about 85 percent less than this list price. Amgen subsequently announced that it would be reducing the price of Repatha by 60 percent, to \$5850, indicating that the initial price did not actually reflect the drug’s value—as ICER determined.

Sovaldi — a Hepatitis C drug—offers another example of inflated launch prices. When initially approved, its manufacturer—Gilead Science—priced the drug at a staggering \$1,000 per pill, or \$84,000 per treatment. This decision ultimately spurred an 18-month Senate investigation, which revealed that Gilead set the price for Sovaldi based on factors such as how high the price could be increased before attracting the attention of Congress.”<sup>5</sup>

**Thus**, because the current system of drug pricing leads to high drug prices denying people access to life-saving medicine and the pharmaceutical market is prone to market failures that cannot self-regulate, we stand **CON**

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<sup>3</sup>Dean Baker. (2015, September 23). End Patent Monopolies on Drugs - NYTimes.com. Nytimes.Com. <https://www.nytimes.com/roomfordebate/2015/09/23/should-the-government-impose-drug-price-controls/end-patent-monopolies-on-drugs>

<sup>4</sup>Benjamin Hart. (2015). Johnson Johnson Massages The Data On A Dangerous Drug. Huffpost.Com.[https://www.huffpost.com/entry/johnson-johnson-massages-the-data-on-a-dangerous-drug\\_n55fbf3bee4b00310edf69771](https://www.huffpost.com/entry/johnson-johnson-massages-the-data-on-a-dangerous-drug_n55fbf3bee4b00310edf69771)

<sup>5</sup>Madeline Twomey (special assistant for Health Policy at the Center for American Progress). “Comprehensive Reform to Lower Prescription Drug Prices.” Center for American Progress. 29 January 2019. <https://www.americanprogress.org/issues/healthcare/news/2019/01/29/465621/comprehensive-reform-lower-prescription-drug-prices/>