

Opinion Editorial

# Dietary Supplement Industry at Risk

by Jonathan Emord, Esquire

The U.S. Food and Drug Administration is poised to remove 20 to 30 percent of existing food supplement companies from the market, force a rise in prices and eliminate the availability of most, if not all, herbal supplements.

The most basic of human rights is that of self-government over our own bodies, especially regarding individual choice over what nutrients to ingest and treatments to receive to sustain optimal health. Today, federal and state regulatory agencies constrict those rights by limiting our choices. Those restrictions on freedom are destined to continue.

Recent examples include state dietitian licensing bills, global censorship of health information, and the Food Safety Modernization Act (FSMA; S. 510/HR 2751). Dietitian licensing bills designate those licensed by the American Dietetic Association as nutritionists and the sole dispensers of nutritional advice and recommendations. Global censorship of nutrient-related disease treatment information by all Western governments that regulate drugs works to preserve a monopoly on therapeutic claims for drug companies. The Food Safety Modernization Act requires that all companies that make food and dietary supplements be



registered with the federal government for the first time, deprives those companies of access to the courts in favor of administrative tribunals, and forces those companies to pay for mandatory federal investigations.

With passage of FSMA, which made every food and dietary supplement company operating in the United States subject to Food and Drug Administration (FDA) licensing, the regulators' decades-old dream of ridding the market of supplements and leaving the field to FDA-approved drugs is closer to realization than ever before. The FSMA comes atop aggressive FDA implementation of new and costly current good manufacturing practice (cGMP) regulations, positioning the agency to regulate every aspect of supplement production. Will the public awaken to the threat and compel the FDA to back down, or will the agency succeed in eliminating safe supplement products, to the detriment of the consuming public?

## Call for Action

Public outcry has helped stem FDA moves to eliminate dietary supplements from the market on dozens of occasions in the past, but has failed to reach a fever pitch in response to the latest round of regulatory efforts. Perhaps that is because the most recent efforts have arisen under a more palatable public interest justification: The argument that consumers must

be protected from potentially unsafe products by permitting the FDA to run companies it thinks may threaten public health out of existence.

The FDA's current approach, using allegations of adulteration, contamination and misbranding—combined with cessation of distribution and recall of unapproved supplements—appears to be far more acceptable to the public than the argument that supplements in general should be removed from the market. It seems that the lesson FDA regulators have slowly learned is that people generally appear to be willing to permit regulatory abuses in the name of public safety.

Moreover, under the Food Drug and Cosmetic Act (FDCA), as interpreted by the federal courts, any promotion that associates a dietary supplement with a disease treatment claim is prohibited. That is so even if the claim is demonstrably true. Censoring information concerning the potential benefit of dietary ingredients shrouds the market in ignorance, depriving consumers of helpful, life-extending or life-saving information. Just one example is the FDA's censorship of the association established in peer-reviewed scientific literature (some 6,000 articles) between Vitamin D and a reduction in the risk of certain kinds of cancer. All Americans could experience a reduction in cancer risk were that association made known at the point of sale, but FDA's prior restraint (its ban on

One current petition fighting to protect natural health-care options challenges the Federal Trade Commission's illegal move to restrict health-related claims. Sign the petition at [anh-usa.org](http://anh-usa.org): Search FTC, then open April 26, 2011 post and click This Link at bottom of page.

all claims associating a nutrient with a disease, even probably true claims) keeps consumers in the dark.

Unfettered by a groundswell of public opposition, the FDA is proceeding at an accelerated pace in inspecting facilities, issuing citations and ultimately driving supplement manufacturers out of business. Companies incapable of affording the associated costs have

no choice but to dissolve. To reverse this course, consumers must contact their elected representatives in congress and demand an immediate repeal of both FSMA and GMP regulations. Then, vote wisely in the 2012 elections to defeat candidates that voted in favor of limiting our freedoms in these areas.

## Worldwide Trend

Many governments around the world currently prohibit essential health claims backed by credible scientific evidence. For example, claims that glucosamine and chondroitin sulfate may eliminate symptoms of osteoarthritis are forbidden in Europe, as well as in Australia, Canada and the United States.

Groups have formed to protest such censorship and restrictions on access to dietary supplement ingredients. For a global view, consult information provided by the Alliance for Natural Health, which is active in Europe and America. In the United States, take action via the Alliance for Natural Health USA, Citizens for Health, Freedom of Health Foundation, The Health Keepers Alliance and National Health Freedom Action.

The way back to liberty lies not only in allowing the marketing of all dietary ingredients that are being used without serious adverse effects, but also in stripping countries of the power to censor nutrient-related disease treat-

ment information. When well-informed consumers make dietary ingredient choices that minimize disease risk and maximize longevity, their improved health reduces their dependence on costly drug therapies which too often carry unwanted side effects.

Imagine a world in which fruits and vegetables, as well as dietary supplements, could lawfully be accompanied by labels summarizing the dietary ingredients present, their effects and their potential for protecting against or fighting disease. In such a world, consumers would be truly active, engaged participants in their own health care.

*Jonathan W. Emord is a constitutional and administrative lawyer in Washington, D.C. The author of The Rise of Tyranny and Global Censorship of Health Information, he has defeated the FDA in federal court eight times. Visit [Emord.org](http://Emord.org).*

## TAKE ACTION HERE

Check these websites regularly to keep abreast of pending state legislation and to sign helpful petitions.

Elected Officials,  
[usa.gov/Contact/Elected.shtml](http://usa.gov/Contact/Elected.shtml)

Alliance for Natural Health USA,  
[anh-usa.org](http://anh-usa.org)

Citizens for Health,  
[Citizens.org](http://Citizens.org)

Freedom of Health Foundation,  
[thefhf.org](http://thefhf.org)

The Health Keepers Alliance,  
[HealthKeepers.net](http://HealthKeepers.net)

National Health Freedom Action,  
[NationalHealthFreedom.org](http://NationalHealthFreedom.org)

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