

16598 COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY

In addition to the factors listed in Section 811(c) of the Act, the Attorney General must request the recommendation of the Secretary of HEW, including the Secretary's consideration of the eight factors listed above. 21 U.S.C. § 811(b).

It is apparent from the statute that the critical inquiry in considering whether to transfer a substance to a more stringent category is its potential for abuse. Indeed, the statute requires that this factor be considered before any further proceedings are initiated. 21 U.S.C. § 811(a)(1)(A). Furthermore, four of the criteria enumerated above specifically concern the substance's potential for abuse. 21 U.S.C. §§ 811(1),(4),(5) and (6).

The statutory emphasis on the substance's potential for abuse and the Congressional intent that abuse be the principal, if not the determinative part of the inquiry is confirmed by the House Report accompanying the passage of the Act, which describes the factors influencing the Attorney General's inquiry as follows:

A key criterion for controlling a substance, and the one which will be used most often, is the substance's potential for abuse. If the Attorney General determines that the data gathered and the evaluations and recommendations of the Secretary constitute substantial evidence of potential for abuse, he may initiate control proceedings under this section. Final control by the Attorney General will also be based on his findings as to the substance's potential for abuse.¹¹⁰

The House Report continues with the definition of "potential for abuse", which includes factors relating to (1) the health of the drug user or the safety of the community; or (2) the extent that the drug is diverted from legitimate drug channels; or (3) the finding that individuals are taking the drugs on their own initiative rather than on the basis of medical advice.¹¹¹ Unquestionably, the hundreds of deaths due to DPX overdose each year illustrate that DPX's potential for abuse exceeds the requirements of each of these criteria.

In a similar vein, the House Report further provides that "misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use are regarded as indicative