During 1938–1962, Section 505 of the Act also required submission to FDA of a new drug application (NDA) which FDA could permit to become effective if the safety of the drug was demonstrated. In 1962, Congress amended this law to require explicit FDA approval of both safety and effectiveness for every new drug. Section 505(d), as added to the statute in 1962, provides three relevant bases for refusing to approve an NDA: insufficient information to determine whether the drug is safe for use under the conditions set out in the proposed labeling, a lack of substantial evidence that the drug will have the effect it purports to have under the proposed labeling, or that based on a fair evaluation of all material facts the labeling is false or misleading in any particular.

It is true that, throughout the debate leading to enactment of the 1938 Act, there were repeated statements that Congress did not intend the Food and Drug Administration to interfere with medical practice, and references to the understanding that the bill did not purport to regulate the practice of medicine. Congress recognized a patient's right to seek civil damages to the courts for malpractice, and declined to provide legislative restrictions upon the medical profession. The legislative history of the 1962 Amendments confirms this Congressional intent. The legislative debate indicates that Congress did not intend to regulate the practice of medicine as between the physician and the patient.

It is equally clear, however, that Congress did intend that FDA determine those drugs for which there exists substantial evidence of safety and effectiveness and which thus will be available for prescribing by the medical profession, and what information constitutes truthful and accurate full disclosure about the drugs to permit the physician to prescribe them safely and effectively. As the law now stands, therefore, the Food and Drug Administration is charged with the statutory responsibility for judging the conditions under which a drug may safely and effectively be used and for approving labeling that fully conveys this information to the physician. The physician is then charged with the professional responsibility for exercising his judgment in prescribing the available drugs in the light of the information contained in their labeling.

The basic question, therefore, is whether there is adequate scientific basis for the labeling with which your petition is concerned. If there is such a basis, there is no question but that FDA has the legal authority, and indeed is obligated by law, to require the labeling of all oral hypoglycemic agents to be changed to reflect that information. It similarly follows that, if the labeling must be so changed, FDA is obligated under the Act to inform physicians and the public, through such media as the FDA Drug Bulletins, about this important change in labeling.

You express concern that the failure of a physician to follow a package insert may render him liable for malpractice. The package insert is not intended either to preclude the physician from using his best judgment in the interest of the patient or to impose liability if he does not follow the package insert. Although package inserts, along with medical texts and expert opinion, may constitute evidence of the proper practice of medicine, they are not controlling on this issue.

The Food and Drug Administration recognizes that the physician must retain his professional judgment in prescribing drugs in the best interest of the individual patient and that a rigid rule cannot be imposed for all situations. A physician should also recognize, however, that the package insert represents a summary of all information on the conditions under which the drug has been shown to be safe and effective by adequate scientific data submitted to the Food and Drug Administration.

We are concerned that you and others misconceive the legal responsibilities of FDA, the status of the package insert, and the responsibilities of a physician when he concludes not to follow the conditions of use approved by the Food and Drug Administration through the package insert. We hope that the above explanation clarifies the situation from the legal standpoint.

B. *Fair balance.*—Your second legal argument is that, assuming that the scientific evidence on the use of oral hypoglycemic agents is equally divided, or at least that there is substantial scientific evidence and opinion on both sides of the issue, FDA should require the labeling to reflect both positions in order to achieve fair balance.

When the Federal Food, Drug, and Cosmetic Act was enacted in 1938, evaluation of drug safety and effectiveness was relatively unsophisticated as compared with today. It was largely the opinion of individual physicians who had tried