



If you think it's wrong to charge \$750 for AIDS drug, blame health care regulations

Eric Boehm
October 1, 2015

Social media lit up last week after news broke that a private hedge fund manager had purchased a drug commonly used to treat AIDS and raised the price from \$13.60 per pill to \$750.

The outrage was understandable. For many observers, “capitalism” had struck again and the greedy desire to make boatloads of cash was surely to blame for the 5,500 percent increase imposed by Martin Shkreli after he purchased the rights to the drug Pyrimethamine (which is sold under the name Daraprim).

Salon called Shkreli “the Donald Trump of drug development.” At Vox, he was dubbed “so perfectly vile — a modern bro version of Gordon Gekko” because “he was in the drug business to make money.” Many worse things were said about him on social media. And then there were the memes.

MARTIN SHKRELI: The guy your friend was ranting about on Facebook the other day. Getting mad at Shkreli is easy in the age of Facebook and Twitter, where you can go from knowing absolutely nothing about a certain topic or person — how many people had honestly heard of Shkreli before last week? — to being blindingly enraged by that same topic or person within the span of a few clicks and 140 characters.

But here's some advice: if you want to get mad at Shkreli, at least be equally mad at the U.S. Food and Drug Administration, which made it possible for him to hike the price of the drug so dramatically.

Why is the FDA to blame? As Walter Olson of the Cato Institute explains, federal regulations that prevent competition between drug companies are what really allowed Shkreli to raise the price of Pyrimethamine.

Pyrimethamine has been around since the 1950s. It is no longer covered by patents, so the formula is no longer a trade secret and, in theory, anyone could manufacture it. It's a little bit like how songs enter the public domain after a certain number of years, which is why no one has to pay royalties to sing “Jingle Bells.”

It's not hard to find the formula for Pyrimethamine: it's on Wikipedia, for crying out loud.

Any other drug company with an intern and an Internet connection could find this formula and manufacture this drug. It's not like Shkreli can get away with charging \$750 per pill because he's the only one who knows how to make it.

In a free market, if Shkreli raised the price of Pyrimethamine to such ridiculous heights, other drug manufacturers should be able, and more-than-willing, to manufacture the same drug and undercut Shkreli by selling it for less. Problem solved.

But in the United States, Olson explains, you can't just manufacture any drug you want — even a drug that has been around for decades and is totally safe to make and use — without the FDA's consent.

That consent comes at a high price.

“But under the distinctive food and drug laws of the United States you can't just start turning out pills in your factory to compete with Shkreli, at least not without compiling and submitting a huge pile of regulatory paper with the U.S. Food and Drug Administration,” Olson writes. “This calls on the services of lawyers and scientists, costs a lot of money, and takes time, and you might or might not be able to recover the costs from the relatively small pool of users.”

Those regulations create a high barrier to entry into the market, and that's what allows hedge fund fat cats like Shkreli to seize monopoly control of a vital drug and essentially force people to pay whatever he charges.

But there must be other solutions to this mess, right? The FDA's rules prevent other American companies from competing with Shkreli, but what about companies overseas?

In India, for example, you can buy this same drug at the bargain basement price of 7 cents per pill, according to data collected by Alex Tabarrok at the Mercatus Center, a free market think tank based at George Mason University.

At that price, it starts to make \$13 per pill look outrageous.

But those companies who are making and selling Pyrimethamine in India aren't allowed to sell those drugs to hospital or laboratories in the United States.

To be fair, there are some serious issues with the quality of some drugs in India. But Pyrimethamine is also readily available in Europe, and yet European drug manufacturers are also prohibited from selling their products in the United States.

Why? Again, because of the FDA.

“It's easy to see that this issue is almost entirely about the difficulty of obtaining generic drug approval in the United States,” says Tabarrok.

What Shkreli did was a form of capitalism, to be sure. He looked around at the market conditions for a drug like Pyrimethamine — market conditions that include a set of incredibly restrictive

rules about who can make and sell a drug, even a drug that is not protected by patents — and took advantage of the situation.

Does that make him an opportunist, perhaps in a bad way? Sure, maybe.

But you don't need price controls on vital drugs — something Hilary Clinton has called for in the wake of the outrage over Shkreli's actions — to prevent someone from doing this. You just need competition in the drug market.

In a free market, capitalist system, competition would prevent someone like Shkreli from being able to hold monopoly control over a drug so readily available in the rest of the world. Without the monopoly control created by federal regulations, he could still charge \$750 per pill — but no one would have to pay that much.