By ACSH Staff — April 30, 2013

Today’s announcement by the FDA’s Commissioner Margaret Hamburg approving Plan B One-Step for women and girls age 15 and up, while welcome in the better late than never category, does not come close to complying with Federal Judge Ed Korman’s ruling of April 5th. That ruling, finding for the plaintiffs in a 2001 lawsuit against the Bush-II FDA, mandated making morning-after contraception universally available over-the-counter (OTC). Note that universally and ages 15 and up are not synonymous, even in the bubble-world of the FDA.

Dr. Hamburg should perhaps be reminded that the Court’s ruling acidly accused the federal drug agency of bad faith in dealing with the requests over more than a decade to make the pill universally available.

Judge Korman is one of the most senior and respected federal judges currently serving. He said, The F.D.A. has engaged in intolerable delays in processing the petition, the judge wrote. Indeed, it could accurately be described as an administrative agency filibuster | The plaintiffs should not be forced to endure, nor should the agency’s misconduct be rewarded by, an exercise that permits the F.D.A. to engage in further delay and obstruction.

In what might be perceived as an ongoing attempt by the FDA (and possibly by their overseers in the Dept of HHS, and the White House itself) to impede implementation of the ruling, Commissioner Hamburg took pains to note that this decision was rendered towards a prior petition that was pending at the time of the federal court ruling:

Teva’s application to market Plan B One-Step for women 15 and older was pending with the agency prior to the ruling. The FDA’s approval of Teva’s current application for Plan B One-Step is independent of that litigation and this decision is not intended to address the judge’s ruling.

The announcement hastened to add that the federal government is still deciding whether to appeal the prior ruling regarding universal access.
I see no reason why the FDA doesn t immediately comply with the April 5th ruling demanding universal OTC access to emergency morning-after contraception. If a young woman or girl is old enough to possibly become pregnant, she is old enough to make a decision to try to prevent that from occurring. The distracting claptrap about sexually-transmitted diseases etc. is merely a smokescreen to distract us in public health and the media from the FDA s bald-faced evasion of complying with the clear federal court ruling. They should immediately comply, in the interest of public health and the law, said ACSH s Dr. Gilbert Ross.

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