

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session
4779

HOUSE BILL NO. _____



Introduced by: Hon. Angelina "Helen" D.L. Tan, M.D.

AN ACT

STRENGTHENING THE REGULATORY SYSTEM IN THE COUNTRY TO COMBAT COUNTERFEIT PHARMACEUTICAL PRODUCTS, DECLARING THE MANUFACTURE, IMPORTATION, DISTRIBUTION, SALE OR OFFER FOR SALE, OR POSSESSION OF COUNTERFEIT PHARMACEUTICAL PRODUCTS AS AN OFFENSE INVOLVING ECONOMIC SABOTAGE, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 8203, OTHERWISE KNOWN AS THE "SPECIAL LAW ON COUNTERFEIT DRUGS"

EXPLANATORY NOTE

A study by the United Nations Office on Drugs and Crime (UNODC) entitled, "Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact", revealed that of the total 673 pharmaceutical crime incidents reported, 460 took place within Southeast Asia, the majority of which occurred in the Philippines, with 193 incidents followed by Thailand (110), Indonesia (93) and Viet Nam (49).

The UNODC report found that "...Pakistan, followed by India and China were the most frequently identified source countries of counterfeit or diverted medicines detected in the Philippines from 2013 through 2017, while thirteen other countries were also identified as sources".

Three Pakistanis were arrested on August 2017 for allegedly selling counterfeit brands of naproxen sodium, paracetamol and a mix of dextromethorphan, phenylephrine and paracetamol. It was reported that the Bureau of Customs has intercepted P128.9 million worth of various illicit drugs on January 2018 in separate shipments where several Pakistani nationals have been implicated. The Food and Drug Administration (FDA) has warned consumers on March 2018 in an advisory against the purchase and consumption of counterfeit Biogesic paracetamol 500-milligram tablets;

The UNODC study defines "falsified" medicines or "fraudulent" medicines as those which are marketed with the intention of deceiving buyers as to the content of what they are buying. "These include misbranded (spurious/fake/falsely labelled) products and those that do not contain what they purport to – i.e. medicines in which the active ingredients are inert, are less than, more than or different from what is indicated, or have expired. They are available in both formal and informal settings, including hospitals, pharmacies, street vendors and online marketplaces. Falsified medical products are often produced in poor or unhygienic conditions by unqualified personnel, and some are found to contain lethal levels of the wrong active ingredient or other toxic substances".

It reveals that the "circulation of falsified medicines presents serious public health and safety risks and threatens the achievement of Sustainable Development Goal 3, to ensure the right to access a reliable standard of healthcare and medicine quality for all".

Incidentally, Republic Act No. 11223, otherwise known as the "Universal Health Care (UHC) Act" specifically provides that within two (2) years from its effectivity, the Philippine Health Insurance

Corporation or PhilHealth shall implement a comprehensive outpatient benefit, including outpatient drug benefit and mandates the Department of Health-owned health care providers to procure drugs and devices.

On the other hand, Republic Act No. 8203, otherwise known as the "Special Law on Counterfeit Drugs" was enacted on September 1996 to provide the Filipino people protection against counterfeit drugs. RA 8203 refers to a counterfeit product as a medicine with correct ingredients in wrong amounts, wrong ingredients, without active ingredients, or with sufficient quantity of active ingredient that results in the reduction of the drug's safety, efficacy, quality, strength or purity. It may be deliberately and fraudulently mislabeled with respect to identity and source or with fake packaging and can be applied to both branded and generic products.

Furthermore, it may also be referred to as: (1) the drug itself or the container or labeling which bears a trademark, tradename or other identification mark or imprint of a Bureau of Patent, Trademark and Technology Transfer- registered natural or juridical person; (2) a drug product refilled by unauthorized persons if the legitimate labels or marks are used; (3) an unregistered drug product except those brought in the country for personal use as confirmed and justified by accompanying medical records; and (4) a drug which contains no amount of or a different active ingredient or less than 80% of the active ingredient it purports to possess as distinguished from an adulterated drug. Under RA 8203, unregistered products as well as those products which were maliciously produced by unscrupulous entities to deceive and for the purpose of financial gain are in the same category.

The application of RA 8203, however, took a different turn when the Supreme Court ruled in *Roma Drug versus GlaxoSmithKline (GSK)*. In this case, it was alleged that Roma Drug had violated RA 8203 for not registering GSK products which were procured under parallel importation. The Supreme Court took the position that the drugstore had not violated the RA 8203 because RA 9502 clearly reveals an intention of the legislature to abrogate RA 8203 because of irreconcilable inconsistencies between the two. It ruled that RA 9502 nullifies the reason or purpose of RA 8203 so the latter loses all meaning and function. As a matter of fact, the Court ruled that "For a law that is intended to help save lives, the SLCD has revealed itself as a heartless, soulless legislative piece."

Said ruling affected the interpretation and application of the law by FDA. The Philippine definition of counterfeit drugs under RA 8203 has been challenged and as a result, FDA no longer invokes RA 8203 but rather applies the rule of RA 3720 and RA 9711 to cases of unregistered pharmaceutical products, including those obtained through parallel importation. As a consequence, three counterfeit drug-related cases reached the Supreme Court and were all decided favoring the accused.

Several laws were also enacted by Congress affecting certain provisions of RA. 8203. These includes RA 9711 (FDA Act of 2009), and RA 10918 (Philippine Pharmacy Law) on the definition of drugs. There is also RA 10175 (Cybercrime Prevention Act of 2012) concerning any of the act prohibited in Section 4 of RA 8203 when committed by, through and with the use of information and communication technologies (online selling, online service, online pharmacy), the same shall also be covered by the relevant provisions of Republic Act No. 10175 and the penalty to be imposed shall be one (1) degree higher than that provided under R. A. No. 8203; RA 10918 (Philippine Pharmacy Law) on the definition of counterfeit drugs, as well as declaring that registered pharmacist shall also be held liable under RA 10918 apart from liability under RA 8203.

Undeniably, in the 22 years since RA 8203 was enacted, there have been many changes in the industry and in anti-counterfeiting technologies, but the continuing real threat that counterfeit pharmaceutical products presents to health, to the security of our children, our family and, in general, to the prosperity of our community cannot be overemphasized. It cannot be denied that we are faced by a rapid growing flood of illegal and dangerous pharmaceutical products.

The UNODC study concludes that some laws to combat the proliferation of falsified medicines are outdated and need to be amended if they are to remain applicable to the increasingly complex nature of pharmaceutical markets and pharmaceutical crimes.

The problem is even more compounded as we have witnessed in the last decade a growth in internet sales of pharmaceutical products and this has been associated with the increasing cases of counterfeit pharmaceutical products entering and moving through countries worldwide, including the Philippines. Given the vast, almost limitless possibilities of the internet, and borderless movement of goods, it undeniably becomes even more challenging for the FDA to combat the distribution of counterfeit pharmaceutical products.

Thus, there is an urgent and imperative need to safeguard the interest of the general public and the government, particularly the FDA under the Department of Health, against the syndicated or highly organized operations of unscrupulous persons engaged in the illegal manufacture, importation, distribution, sale or offer for sale, or possession of counterfeit pharmaceutical products.

Indisputably, these nefarious and illegal operations threaten to undermine the people's confidence in the health regulatory system and have already resulted in the loss of considerable government revenues.

Last year, no less than President Rodrigo Roa Duterte ordered the Philippine National Police to arrest persons involved in the manufacture, importation, trade, administering, dispensing, delivering, distributing counterfeit drugs and charge them with economic sabotage. According to him, they will be charged with economic sabotage because those acts undermine not only the economy because it will affect the law of supply and demand and affect the prices, but it also threatens the security of the nation because it endangers the health of the people.

In this light, the bill incorporates as economic sabotage the illegal manufacture, importation, distribution, sale or offer for sale, or possession of counterfeit pharmaceutical products to a certain extent to emphasize the seriousness of the prohibited acts and their highly deleterious effect on people's lives.

In view thereof, the immediate approval of this measure is earnestly sought.



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Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4779

Introduced by: Hon. Angelina "Helen" D.L. Tan, M.D.

AN ACT

STRENGTHENING THE REGULATORY SYSTEM IN THE COUNTRY TO COMBAT COUNTERFEIT PHARMACEUTICAL PRODUCTS, DECLARING THE MANUFACTURE, IMPORTATION, DISTRIBUTION, SALE OR OFFER FOR SALE, OR POSSESSION OF COUNTERFEIT PHARMACEUTICAL PRODUCTS AS AN OFFENSE INVOLVING ECONOMIC SABOTAGE, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 8203, OTHERWISE KNOWN AS THE "SPECIAL LAW ON COUNTERFEIT DRUGS"

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the "Counterfeit Pharmaceutical Products Prevention Act".

SEC. 2. *Declaration of Policy.* – It is the policy of the State to protect and promote the right to health of the people and instill health consciousness among them, establish and maintain an effective food and drug regulatory system, and undertake appropriate health manpower development and research responsive to the country's health needs and problems. In furtherance of this constitutional mandate, this Act aims to adopt, support, establish, institutionalize, improve and maintain structures, processes, mechanisms and initiatives that are aimed, directed and designed to strengthen the capability of the State to prevent activities that may result, or detect, investigate, suppress, and more effectively respond to actions that result in counterfeit pharmaceutical products.

Towards this end, it shall strengthen the prohibitions against counterfeit pharmaceutical products; declare the manufacture, importation, distribution, sale or offer for sale, or possession of counterfeit pharmaceutical products as offenses involving economic sabotage; and provide stricter penalties for violations of this Act.

SEC. 3. *Definition of Terms.* – As used in this Act:

(a) *Biopharmaceuticals* shall refer to pharmaceutical products that are used for therapeutic or for in vivo diagnostic purposes, such as vaccines, sera, and drugs derived from life forms using biotechnology. These include proteins, nucleic acids, or living microorganisms where the virulence is reduced and are used for therapeutic or for in vivo diagnostic purposes.

(b) *Brokering* shall refer to any act of facilitating the disposal or sale of counterfeit pharmaceutical products, including acts of agency;

(c) *CDRR* shall refer to the Center for Drug Regulation and Research of the FDA;

(d) *Counterfeit pharmaceutical products* shall refer to pharmaceutical products which fall under any of the following conditions, which results in the reduction of the pharmaceutical products'

safety, efficacy, quality, strength or purity:

1. do not contain the amounts as claimed;
2. with wrong ingredients;
3. without active ingredients; or
4. with less than eighty percent (80%) of the active ingredient it purports to possess as distinguished from an adulterated drug including reduction or loss of efficacy due to expiration.

It shall also refer to products that are deliberately and fraudulently misrepresented with respect to their identify, composition and/or source. For this purpose, the terms:

- i. "Identity" shall refer to the name, labelling or packaging or to documents that support the authenticity of an authorized pharmaceutical product;
- ii. "Composition" shall refer to any ingredient or component of the pharmaceutical product in accordance with applicable specifications authorized/recognized by the FDA;
- iii. "Source" shall refer to the identification, including name and address, of the marketing authorization holder, manufacturer, importer, exporter, distributor or retailer, as applicable.

Any consideration related to intellectual property rights does not fall within this definition.

(e) *Director General* shall refer to the Director General of the FDA.

(f) *Drugs* shall refer to pharmaceutical products that pertain to any chemical compound or biological substance, other than food, intended for use in the treatment, cure, mitigation, prevention or diagnosis of disease in humans or animals, including but not limited to:

1. Any article recognized in the Philippine Pharmacopoeia, Philippine National Drug Formulary, or in any foreign official pharmacopoeias and formularies which are adopted by the FDA or any documentary supplement to any of them;

2. Any article, other than food, intended to affect the structure or any function of the human body or animals;

3. Any article intended for use as a component of any chemical compound or biological substance or articles specified above, not including devices or their components, parts, or accessories; or

4. Herbal and/or traditional drug which are articles of plant or animal origin used in folk medicine, which are:

a. recognized in the Philippine National Drug Formulary; or

b. intended for use in the treatment, cure, mitigation, prevention or diagnosis of disease symptoms, injury or body defects in humans; or

c. other than food, intended to affect the structure or any function of the human body; and

d. in finished or ready-to-use dosage form; or

e. intended for use as a component of any of the articles specified in clauses (a), (b), (c), and (d);

(g) *Department* shall refer to the Department of Health;

(h) *Economic Sabotage* shall refer to any of the acts which are declared unlawful and

prohibited under this Act when committed and the amount of the counterfeit pharmaceutical product(s) involve (whether as a single product or totality of different pharmaceutical products) is One Million Pesos (Php1,000,000.00) or more, as valued by the Food and Drug Administration, any provision of law to the contrary notwithstanding.

(i) *Establishment* shall refer to a sole proprietorship, a partnership, a corporation, an institution, an association, or an organization engaged in the manufacture, importation, exportation, sale, offer for sale, distribution, donation, transfer, use, testing, promotion, advertising, or sponsorship of pharmaceutical product, including the facilities and installations needed for its activities.

(j) *FDA* shall refer to the Food and Drug Administration.

(k) *FDRO* shall refer to the Food and Drug Regulation Officer of the FDA.

(l) *LSD* shall refer to the laboratories under the FDA including those private laboratories accredited by the agency to conduct particular scope of analysis.

(m) *LSSC* shall refer to the Legal Services Support Center of the FDA.

(n) *Medicines* shall refer to drugs in their appropriate dosage forms, with assured quality, safety and efficacy for humans or animals, or both.

(o) *Online Service* shall refer to the sale, offering for sale, donation, distribution, trafficking, brokering of pharmaceutical product, or the sale of any punch, dye, plate or any other equipment or instrument designed to print, imprint or reproduce the trademark, trade name or other identifying mark for use to any pharmaceutical product, through and with the use of information and communication technology system. The term shall also cover Online Selling or Online Pharmacy Services.

(p) *Owner* shall refer to a person or group of persons who is the registered owner of a license to operate a business or business undertaking in the Philippines or the branch manager or operator, license, franchise, or any person acting on behalf of the corporate entity. *Pharmaceutical Products* shall refer to drugs, medicines, biologicals, pharmaceutical and biopharmaceutical products/specialties, veterinary products, veterinary biologics and veterinary medicinal products.

(q) *Residence* shall refer to a private dwelling or abode where a person lives, either as owner or lessee, or usufructuary including, for purposes of this Act, its yard, garage, storage rooms or premises; provided that where the yard, garage, storage rooms or premises are used to manufacture, process, pack, or hold pharmaceutical products for introduction into domestic commerce, the same shall not fall as residence but be considered as establishment.

SEC. 4. *Prohibited Acts.* - The following acts are declared unlawful and therefore prohibited:

(a) The manufacture, importation, distribution, sale, offering for sale, donation, trafficking, brokering, exportation, or possession of counterfeit pharmaceutical products as defined in Section 3 hereof.

Any provision of law to the contrary notwithstanding, when any of the acts in the preceding paragraph is committed and the amount of the counterfeit pharmaceutical product(s) involve (whether as a single product or totality of different pharmaceutical products) is One Million Pesos (Php1,000,000.00) or more, as valued by the Food and Drug Administration, they shall be deemed as an offense involving economic sabotage.

The presence or availability of such counterfeit pharmaceutical product within the premises of any entity engaged in the manufacture, importation, distribution, sale, offering for sale, donation, trafficking, brokering, exportation, of pharmaceutical products or in a private residence, or in public or private vehicle, shall constitute a prima facie evidence of violation of this Act.

The above presumption shall not apply to the legitimate owners of trademarks, trade names or other identifying marks, or the legitimate or authorized representatives or agents of such owners, who have in their possession counterfeit pharmaceutical products which bear the trademarks, trade names or marks if they can show the sales invoices or official receipts evidencing their purchase from a drugstore, manufacturer or distributor suspected by them of dealing in counterfeit drugs involving the trademarks, trade names and other similar identifying marks registered in their names: Provided, that such counterfeit pharmaceutical products shall be reported and immediately turned over to the FDA within a period of ten (10) days from the date of purchase of such counterfeit pharmaceutical product as indicated in the sales invoice, official receipt, or other similar documents abovementioned to the time the counterfeit pharmaceutical product are reported and turned over to the FDA.

(b) Possession of any such counterfeit pharmaceutical product. However, any person found in possession of counterfeit pharmaceutical product, in violation of this subsection, shall be exempted from liability under the provisions of this Act after:

(1) Presentation of sales invoices, official receipt or other legally acceptable documents evidencing his purchase thereof from a drugstore, distributor, manufacturer, hospital pharmacy or dispensary; or any other person or place duly licensed to sell and/or dispense pharmaceutical product, and indicating therein the batch and lot numbers, as well as the expiry dates of such pharmaceutical product; or

(2) Presentation of certificates and other documents evidencing the importation or exportation of the counterfeit pharmaceutical product found in his possession as required by existing laws, including those documents required in the preceding paragraph covering the commercial transactions involving counterfeit drugs.

In both cases, the subject counterfeit pharmaceutical product must not on its face appear to be as such, or do not bear any marking or any patently unusual characteristic sufficient to arouse the suspicion of a reasonable and prudent person that such pharmaceutical product is counterfeit. Furthermore, the amount or volume of counterfeit pharmaceutical product held is such that it does not negate or is inconsistent with the averment that the same are for personal use, notwithstanding the presentation by the possessor of medical records and other similar documents accompanying and justifying the use of such pharmaceutical product.

When the amount of the counterfeit pharmaceutical product(s) in possession of any person (whether as a single product or totality of different pharmaceutical products) is One Million Pesos (p1,000,000.00) or more, as valued by the Food and Drug Administration, the act of possession shall be deemed as an offense involving economic sabotage.

(c) Photocopying, duplicating, altering, printing, transferring, obliterating or removing the approved label or any part thereof, lawfully belonging to another person, for the purpose of using such label or a part thereof on any counterfeit pharmaceutical product: Provided, that if the person who committed any of the acts enumerated in this paragraph and the person who used the labels produced thereby are not one and the same person and the former had knowledge of the purpose for which the labels are intended, the former shall also be liable under the act notwithstanding the failure of the latter to achieve the intended purpose; and

(d) Making, selling, or concealing any punch, dye, plate or any other equipment or instrument designed to print, imprint or reproduce the trademark, trade name or other identifying

mark of another registered producer or any likeness thereof, upon any pharmaceutical product or device or its container or label without authority from the legitimate owners of the trademark or trade name.

SEC. 5. *Parties Liable.* - The following persons shall be liable for violation(s) of this act:

- a) the manufacturer, importer exporter, distributor, seller, distributor, trafficker, broker or donor of the counterfeit pharmaceutical product and their agents, as the case may be;
- (b) the possessor of counterfeit pharmaceutical product as provided in Section 4(b) of this Act;
- (c) the manager, operator or lessee of the laboratory or laboratory facilities used in the manufacture of counterfeit pharmaceutical product;
- (d) the owner, proprietor, administrator or manager of the drugstore, hospital pharmacy or dispensary, laboratory or other outlets or premises where the counterfeit pharmaceutical product is found who induces, causes or allows the commission of any act herein prohibited;
- (e) the licensed and registered pharmacist of the establishment, or the licensed and registered pharmacist of the outlet where the counterfeit pharmaceutical product is sold or found, who sells or dispenses such drug to a third party; and
- (f) should the offense be committed by a juridical person the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for the violation; and if such officer is an alien, he shall, in addition to the penalties herein prescribed be deported without further proceedings.

SEC. 6. *Liability under Other Laws.* - Prosecution under this Act shall be without prejudice to any liability for violation of any provisions of other laws.

SEC. 7. *Administrative Proceedings.* - The FDA is hereby further authorized to undertake the following administrative actions.

A. Procedure When Counterfeit pharmaceutical product Is Monitored In the Market Pursuant To A Routine Inspection of the FDRO.

If the FDRO, in the course of his/her routine/regular inspection of a factory, warehouse, establishment in which drugs are manufactured, processed, packed, or held, for introduction into domestic commerce, or vehicle, and all pertinent equipment, finished or unfinished materials, containers, and labeling therein, upon the authority conferred by Section 27 of Republic Act No. 3720 as amended, shall suspect certain stocks as counterfeit pharmaceutical product, the FDRO shall conduct an inventory, segregate and seal the suspected stocks, and collect samples for examination as to the pharmaceutical product's genuineness and authenticity;

B. Procedure When Information is Received About the Presence of Counterfeit pharmaceutical product in the Possession of Any person or Establishment.

1. Any information, either referred by the government office or officer or from anonymous sources or person requesting confidentiality of their identities, on the existence of suspected counterfeit pharmaceutical product in the possession of any manufacturer, seller or distributor, shall undergo the verification process by the FDRO, or any officer deputized or authorized by the Director General. Verification process shall follow the existing system and procedure in the conduct of case build-up, investigation or other appropriate interventions adopted by the FDA.

2. If the counterfeit pharmaceutical product is located in an establishment:

- a. Seize the counterfeit pharmaceutical product and take them into custody; and
- b. Proceed in filing a criminal complaint and/or administrative complaint.

3. If the counterfeit pharmaceutical product is located in a private residence:

- a. Secure a valid search warrant from a competent court;
- b. After having obtained the search warrant, inventory and seize such counterfeit pharmaceutical product and take them into custody; and
- c. Proceed in filing a criminal complaint and/or administrative complaint.

C. Findings of Counterfeit Drug/Medicine by Owners of Trademarks, Trade Names or Other Identifying Marks.

Owners of trademarks, trade names or other identifying marks, or their authorized agents who have found their pharmaceutical product being counterfeited shall file an administrative case before the FDA following the procedure in the preceding section.

SEC. 8. *Hearing of Administrative Complaints and Institution of Criminal Action.* - The FDA shall hear and decide administrative complaints filed before the agency following the rules of procedure provided under Republic Act No. 3720, as amended, and its Implementing Rules and Regulations.

Upon preliminary findings of the conduct of prohibited acts, the Director General shall issue the proper notices or orders to the person or persons concerned and such person or persons shall be given an opportunity to be heard before the FDA.

Preventive Closure Order. A summons with preventive closure order shall be issued against the warehouse, building, factory, store, shop or any other structure where the said counterfeit pharmaceutical product are contained or stored within fifteen (15) days upon the filing of administrative complaint. This is for the purpose of preventing the disposition or tampering of evidence, the continuance of acts being complained of, and/or the flight of the Respondent.

After the lapse of the 30-day period, the preventive closure order is deemed lifted without prejudice to the resolution of the case.

Both criminal and administrative actions may be instituted separately and independent of one another.

SEC. 9. *Penalties.* -

A. Administrative Sanctions and Other Remedies

Upon finding that the pharmaceutical product examined is counterfeit and the determination of the parties liable thereof, the FDA shall impose any or all of the following administrative penalties and/or pursue other remedies:

1. (i) **Minimum Penalty.** An administrative fine of not less than One hundred thousand pesos (PHP100,000.00) but not more than Five hundred thousand pesos (PHP500,000.00) shall be the minimum administrative penalty.

(ii) Medium Penalty. An administrative fine of at least Three hundred thousand pesos (PHP300,000.00) but less than Five hundred thousand pesos (PHP500,000.00) and suspension or revocation of its license to do business shall be the medium administrative penalty.

When any violation of any provisions of this Act comes to the knowledge of the Director General, of such character that a criminal prosecution ought to be instituted against the offender, he shall certify the facts together with the laboratory report, the findings of the FDA, or other documentary evidence on which the charge is based.

The Director General is hereby authorized to call on the assistance of any Department, Office or Agency for the effective implementation of the provisions of this Act.

(iii) Maximum Penalty. An administrative fine of Five hundred thousand pesos (PHP500,000.00) and permanent closure of the establishment concerned as well as the revocation of its license to do business shall be the maximum administrative penalty.

Provided, that if any or all of the instances below occur, the maximum imposable fine of Five hundred thousand pesos (PHP500,000.00), revocation of its license to do business and permanent closure of establishment, and permanent disqualification of the person concerned whether natural or juridical, from owning or operating a drug establishment or outlet, as the case maybe, shall be imposed:

a. If the Respondent or any of his officer or agent shall conceal, substitute, dispose or destroy any pharmaceutical product that may have been segregated and sealed by the; or

b. If the Respondent or any of his officer or agent shall break, alter or tamper any mark or seal used by the FDA to identify those segregated drugs; or

c. As a result of the use of the pharmaceutical product found to be counterfeit, the illness sought to be cured is aggravated or physical injury or suffering results therefrom, or be the proximate cause of death or permanent disability of the victim or patient.

Any of the imposable penalties in Paragraphs (i), (ii) and (iii) above shall be accompanied by forfeiture, confiscation and destruction of the pharmaceutical product(s) found to be counterfeit and the equipment, instrument and other articles used in violation of this Act or this implementing rules and regulations.

2. Other Remedies.

a. filing of an appropriate proceedings against the registered pharmacist with the Professional Regulations Commission for imposition of the appropriate penalties as provided under Republic Act No. 10918 or the Philippine Pharmacy Act or its amendment;

b. filing of criminal charges against the violator(s), which can be instituted independently from the administrative case: Provided, That the dismissal of the criminal case shall not lift the closure order, except when it is a dismissal on the merits or for lack of basis: Provided, further, That the withdrawal of the private criminal complaint shall not be a ground for the dismissal of the administrative proceedings; and

B. Criminal Sanctions

The commission of any of the acts prohibited under Section 4 of this Act shall be punished by:

1. imprisonment of not less than six (6) months and one (1) day but not more than six (6)

years for mere possession of counterfeit pharmaceutical product as provided for in Section 4 (b) of this Act; or

2. imprisonment of six (6) years and one (1) day, but not more than ten (10) years or a fine of not less than One hundred thousand pesos (PHP100,000.00) but not more than Five hundred thousand pesos (PHP500,000.00) or both such imprisonment and fine at the discretion of the court in any other case mentioned in Section 4 of the Act; or

3. imprisonment of not less than six (6) months and one (1) day, but not more than two (2) years and four (4) months if the counterfeit pharmaceutical product is intended for animals; or

4. imprisonment of not less than six (6) years and one (1) day but not more than ten (10) years for any manufacturer, seller or distributor who shall conceal, substitute, dispose or destroy any pharmaceutical product as may have been segregated and sealed by the FDA, or who shall break, alter or tamper any mark or seal used by the FDA to identify those segregated drugs as provided for under Section 6(A) of this Act. Any other person who breaks, alters or tampers any mark or seal used by the FDA to identify the segregated pharmaceutical product shall suffer the penalty of not less than six (6) months and one (1) day, but not more than six (6) years imprisonment; or

5. if, as a result of the use of the pharmaceutical product found to be counterfeit, the illness sought to be cured is aggravated or physical injury or suffering results therefrom, a punishment of imprisonment from twelve (12) years to fifteen (15) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (PHP500,000.00) shall be meted out; or

6. should a counterfeit pharmaceutical product be the proximate cause of death of a victim, who unknowingly purchased and took a counterfeit pharmaceutical product, the penalty of life imprisonment and a fine of Five hundred thousand pesos (PHP500,000.00) to Five million pesos (PHP5,000,000.00) shall be imposed.

Provided that, any provision of law to the contrary notwithstanding, when any of the acts declared unlawful and prohibited under Section 4 above is committed and the amount of the counterfeit pharmaceutical product(s) involve (whether as a single product or totality of different pharmaceutical products) is One Million Pesos (Php1,000,000.00) or more, as valued by the Food and Drug Administration, it shall be deemed as an offense involving economic sabotage and punishable by life imprisonment and a fine of Five Million Pesos (Php5,000,000.00) to Ten Million Pesos (Php10,000,000.00).

In case any Act prohibited in Section 4 of this Act is also punishable under other laws, the offender shall, if warranted by the evidence, be prosecuted under the law prescribing the highest penalty.

When the sale, offering for sale, donation, distribution, trafficking, or brokering of counterfeit pharmaceutical product, or the sale of any punch, dye, plate or any other equipment or instrument designed to print, imprint or reproduce the trademark, trade name or other identifying mark of another registered producer or any likeness thereof, upon any pharmaceutical product or device or its container or label without authority from the legitimate owners of the trademark or trade name, as prohibited in Section 4 of this Act is committed by, through and with the use of online service, the same shall also be covered by the relevant provisions of Republic Act No. 10175 or the "Cybercrime Prevention Act of 2012". Provided, that the penalty to be imposed shall be one degree higher than that provided under this Act.

SEC. 10. *Inter-agency, Stakeholders and International Cooperation.* – All relevant inter-agency, other stakeholders and international instruments, programs, cooperation, and

arrangements agreed, whether in regulatory or criminal matters, to the widest extent possible for the purposes of detection, investigation, suppression, proceedings or effective response concerning administrative or criminal offenses related to counterfeit pharmaceutical products, or for the collection of evidence, shall be given full force and effect.

SEC. 11. *Establishments' Responsibilities.* - All pharmaceutical product establishments, including the licensed and registered pharmacist under their employ, shall ensure at all times that pharmaceutical products satisfies the requirements of pharmaceutical products' laws and standards relevant to their activities in the pharmaceutical product supply chain and that control systems are in place to prevent or eliminate counterfeit pharmaceutical products.

Pharmaceutical product establishments shall be knowledgeable of the specific requirements and standards of pharmaceutical product laws and regulations relevant to their activities in the pharmaceutical product supply chain and the procedures adopted by the regulatory authority.

If a pharmaceutical product establishment considers or has reason to believe that a pharmaceutical product which it produced, processed, imported, distributed, sold, offered for sale is counterfeit, it shall immediately initiate procedures to withdraw the pharmaceutical product in question from the market and inform the regulatory authority.

Pharmaceutical product establishments shall allow inspection of their business and collaborate with the regulatory authority on actions taken to avoid risks posed by the counterfeit pharmaceutical product they have supplied.

SEC. 12. *Rapid Alert System.* - The rapid alert system in place for the notification of direct or indirect risk to human health due to counterfeit pharmaceutical product shall be strengthened by the FDA.

SEC. 13. *Strengthening the Pharmacovigilance System.* - The FDA, in coordination with the DOH or other stakeholders shall strengthen the existing Pharmacovigilance System.

Within one hundred twenty (120) days from effectivity of this Act, the FDA shall establish a pharmacovigilance unit within its CDRR with appropriate staffing of officers and personnel and experts and be regularly allocated with appropriate budget.

SEC. 14. *Training and Consumer Advocacy and Education.* - Training, orientation, education, and other advocacy activities shall be regularly provided by the FDA to pharmaceutical product establishments, communities, and other sectors of the community.

A consumer advocacy and education program shall be developed and implemented by the FDA in partnership with relevant NGOs, private organizations, coalitions, academic institutions, or other relevant government agencies. The FDA shall allocate and provide funds for the development and implementation of training and consumer advocacy and education programs.

SEC. 15. *Appropriations.* - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act for the year following its enactment and every year thereafter.

SEC. 16. *Enforcement and Implementation.* - The FDA of the Department of Health is hereby authorized to administer and supervise the implementation of this Act subject to the applicable provisions of Republic Act No. 10175 or the "Cybercrime Prevention Act of 2012".

SEC. 17. *Implementing Rules and Regulations.* - The FDA, in consultation with the stakeholders, shall promulgate the implementing rules and regulations within One Hundred Twenty (120) days from the effectivity of this Act.

SEC. 18. *Interpretation and Construction in Favor of Protection of Public Health.* - All doubts in the implementation and interpretation of the provisions of this Act, including its implementing rules and regulations, shall be resolved in favor of protecting public health against counterfeit pharmaceutical products.

SEC. 19. *Separability Clause.* - If any provision of this Act is held invalid or unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SEC. 20. *Repealing Clause.* - Republic Act No. 8203 is hereby repealed. All other laws, decrees, executive orders and rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 21. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,