

Global Pharmaceutical Law and Policy

Solutions to the Intensifying Health Crisis



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Preface

(version 6.0, June 2026)

The world currently faces a health crisis. It has two intertwined dimensions. First, many diseases pose increasingly serious threats to humankind. Second, poor countries carry heavier disease burdens and face more severe threats than rich countries.

Among the most effective tools we might use to address the crisis are pharmaceutical products – vaccines (to prevent diseases) and therapies (to alleviate or cure them). Unfortunately, we have thus far failed to exploit the full potential of those products. The set of drugs that we have developed is not optimal, and too few people have been provided access to them. This book seeks to identify ways in which we could do better.

Many institutions and people deserve shares of the credit for the large benefits we have reaped from pharmaceutical products in the past: governments, which provide crucial funding and incentives for the invention and testing of new drugs, oversee the testing of them, and then help distribute them; nongovernmental organizations, which also engage in some of these functions; universities, where pioneering scientists do much of the basic research essential to the identification of opportunities for pharmaceutical innovation; and commercial firms, which perform much of the applied research that gives rise to new drugs and then test and distribute them. But those same parties are also partly responsible for the failures of the existing system. Our ambition is to show how, separately or collaboratively, they could help alleviate the crisis.

The argument proceeds as follows: Chapter 1 describes the crisis in detail. Chapter 2 explores the potential power of pharmaceutical products to address it and the impediments that would have to be overcome if we are to realize that potential. Chapter 3 provides background for the ensuing analysis of reform options by discussing the ways in which governments currently manage pharmaceutical products. Chapter 4 addresses a moral question: Which parties have what kinds of obligations to help alleviate the crisis?

The balance of the book then considers six families of practicable reforms. Chapter 5 considers potential improvements in the markets for drugs. Chapter 6 explores ways in which pharmaceutical firms might be induced to practice differential pricing more often and in more socially responsible ways. Chapter 7 explores a particular form of voluntary licensing that would enable firms to get their products into the bodies of more of the people who need them. Chapter 8 identifies ways in which the intellectual-property systems of both rich and poor countries could be modified to help mitigate the crisis. Chapter 9 considers how governments might make more extensive use of incentive systems other than intellectual property. Chapter 10 examines several potential ways of using regulations, rather than incentives, to better align the behavior of all players in this system with global social welfare.

This set of reform options is intentionally incomplete in one respect: it does not address possible modifications of our laws or institutions that are highly unlikely to be adopted in the foreseeable future. Each of us has explored such utopian proposals in previous works,¹ and many other visionary options can be found in the relevant literature. We persist in thinking that some of them would be substantially better than our current regime. We avoid discussing them here only because the probability of securing them soon is low, and the task of exploring and integrating practicable reform options is daunting enough.

¹ See William W. Fisher and Talha Syed, "A Prize System as a Partial Solution to the Health Crisis in the Developing World," in *Incentives for Global Public Health*, ed. Thomas Pogge (Cambridge: Cambridge University Press, 2010); Talha Syed, "Does Pharma Need Patents?," *Yale Law Journal* 134 (2025).

Acknowledgments

During the several years in which we have been working on this project, many people have kindly lent us aid. Some should be considered co-authors. Katrina Geddes co-wrote an early version of the section of Chapter 9 that examines the lessons that can be drawn from the history of Ebola. Claudio Lilienfeld, Ruth Okediji, Clifford Samuel, Ken Shotts, and Abraham Sofaer co-wrote Chapter 7, which discusses voluntary licensing. The jointly authored material is reprinted here with their gracious permission.

Other colleagues have provided helpful comments on portions of the manuscript. They include Keith Aoki, Margo Bagley, Brook Baker, Yochai Benkler, Oren Bracha, Colleen Chien, Anupam Chander, Aidan Hollis, Scott Hemphill, Justin Hughes, Amy Kapczynski, Jeff Kindler, Michael Kurilla, Jamie Love, Helene Madonick, Roni Mann, Peter Menell, Rob Merges, Edwin Mercado, Quentin Palfrey, Judit Rius Sanjuan, Arul Scaria, Madhavi Sunder, and Mark Wu.

Also stimulating were the questions asked by the members of the audiences in the academic settings in which we presented portions of the evolving argument:

- University of Oregon
- University of California, Berkeley
- University of California, Davis
- University of California, Los Angeles
- University of Texas, Austin
- Duke University
- Georgetown University
- Harvard Law School
- Pontifical Catholic University of Rio Grande do Sul, Porto Alegre, Brazil
- Bocconi University, Milan
- Tel Aviv University
- University of Nairobi
- National Law University of India, Bangalore
- Nanjing University
- Tongji University, Shanghai
- University of the Philippines
- De La Salle University, Manilla

For the past three years, one of us has been teaching an online course in collaboration with the World Intellectual Property Organization that covers many of the themes addressed in the book.² The questions and contributions of the instructors and the students in that course have led to myriad refinements of our proposals.

² The course is offered twice a year to 500 students selected by WIPO. Typically, the students are drawn from over 100 countries. Information concerning the course is available at <https://www.wipo.int/en/web/wipo-academy/w/news/2024/registration-now-open-wipo-harvard-law-school-patentx-course>. The current version of the syllabus is available at <https://ipxcourses.org/patent-law->

Finally, we have leaned heavily on our families during the gestation of the book. Without the love and support of Diane Rosenfeld, Saki Bailey, Ella Bailey-Reiz, and Misha Syed, it could not have been written.

and-global-public-health/. Biographies of the instructors are available at <https://ipxcourses.org/patentx-faculty/>.