The EpiPen Controversy
Byron A Ellis – September 03, 2016

The Jethro Project - Heather Bresch, Mylan Chief Executive Officer (CEO), the daughter of Senator Manchin, former governor of West Virginia, worked as a clerk for Mylan, a generic drug company, in 1992 and became its CEO in 2012.

When her father was Governor of West Virginia, West Virginia University (WVU) granted her a Master of Business Administration degree without having fulfilled all requirements. The degree was later rescinded and WVU president Mike Garrison, provost Gerald Lang, and business-school dean R. Stephen Sears resigned.

Mylan, under the leadership of Senator Manchin's daughter completed a corporate tax inversion plan in 2015 and moved to the Netherlands, a country with lower tax rates.

In 2007, Mylan acquired from Merck the rights to the legacy EpiPen drug, used to treat anaphylaxis. It lobbied the Food and Drug Administration (FDA) to broaden the EpiPen label, as well as Congress to pass legislation for making the EpiPen available in schools; both actions opened larger markets for the EpiPen product. While acquiring larger markets Mylan was simultaneously increasing the EpiPen price from under $100 to around $600.

Many parents needing the lifesaving EpiPen drug for their kids believe that the price hikes are a form of price gouging. As a result, some members of Congress have called for investigations of the exorbitant price increases.

Mylan has reacted to the public outrage by proposing two different prices for the same product. The practice of charging different prices for the same good or service is known as price discrimination. Furthermore, Mylan's proposed pricing scheme appears to violate the Robinson-Patman Act.

The Federal Trade Commission (FTC) indicates that price discriminations are generally lawful, if they reflect the different costs of dealing with different buyers or are the result of the seller's attempt to meet competitors' offerings.

The FTC also notes that the practice of price differences in sale of identical goods that cannot be justified based on cost savings or meeting competitors' prices might be illegal under the Robinson-Patman Act.

There are three basic types of price discriminations: (1) perfect or first-degree, (2) second-degree or quantity based and (3) third-degree or identity based. Price discrimination is often implemented to extract all of the consumer surplus, since the discriminator is charging the maximum price for each unit.

Under price discrimination, Mylan will charge a higher price for the EpiPens where the demand is less elastic.

Legislative decrees at the federal and state levels facilitated Mylan's virtual monopoly of the Epinephrine market. The "EpiPen Law," School Access to Emergency Epinephrine Act in 2013, signed by President Obama gave Mylan's brand a significant market advantage.

Mylan's price gouging reflects all that is wrong with the USA for profit healthcare system. Most, if not all, players in the healthcare system are profit maximizers, leading to steady increases in the prices of healthcare commodities and services, even when costs are rising slowly or declining.