

**PCIJ's interview with Alexander Padilla, health undersecretary
23 August 2006**

PCIJ: How key is your role in the push for the revised IRR?

Padilla: We chaired the committee that drafted the IRR. I really believe in the revised IRR. I was there in the forefront.

PCIJ: How difficult was it to have the revised IRR drafted and finally signed?

Padilla: It went through 19 drafts. More than two years. The law was in 1986, and this is the first revision of this kind. Adapting to the newer conditions. We had public consultations, and of course there were always the opposing views --- diametrically opposed views. We had to make a stand, and sometimes we had to compromise.

PCIJ: In all of those consultations, the milk industry was always represented.

Padilla: Yes. Their views were not necessarily always heeded, but they were represented. The problem was, some of the milk companies were saying that the one supposedly representing them did not represent them.

PCIJ: Aside from the Pharmaceutical and Health Care Association of the Philippines, were there other groups during the consultations?

Padilla: Well Nestle is not part of PHAP. Unilab as well. Those were as far as the milk industry was concerned.

PCIJ: And during all these consultations, 19 drafts, the milk companies had their position very clear. They wanted the old rules intact.

Padilla: They not only wanted the old rules intact, they wanted them made lax.

PCIJ: What, for example, did they want there that would make the rules more lax?

Padilla: Under the old rules, exclusive breastfeeding was up to four to six months. After six months, the department has nothing to do with it. Whether you call it follow-on milk, breast milk substitute, they don't have to apply for approval for advertisements. In the old rules, we were implementing up to six months, and sometimes up to one year, because that is the definition of an infant. Under the new rules, we want to implement up to two years. Under the position of PHAP, or most of the milk companies, they prefer that we maintain merely four months.

PCIJ: Meaning I can advertise all I want for baby products suitable for four months and beyond.

Padilla: Yes.

PCIJ: And what is the health officials' position on that?

Padilla: Our position is that ... breastfeeding is an international norm. It was in its infancy in 1986. It was a tradition of course but the actual scientific investigation, formulation ... at infancy in 1986, and was progressing. It went through several studies, until it reached the conclusion that up to 24 months it was alright. We wanted to adapt. We wanted to make it as adaptable to the international code. We wanted it to be adaptive.

PCIJ: The revised IRR is stricter. It would impose stricter penalties.

Padilla: It expands the coverage of the law.

PCIJ: How big of a setback is the TRO issued by the Supreme Court?

Padilla: It is a big setback. Especially how it was made. The petition was filed June 28. By July 11, the petition for TRO was denied. We were gladdened by that development. But in less than a month after, when they filed their motion for reconsideration, and even before we filed our comment, the Supreme Court reversed itself. That's very unusual. That's very unusual. And I can only attribute that to extensive lobbying by the milk industry.

PCIJ: Among the Supreme Court justices?

Padilla: Well they filed their motion for reconsideration. For the Supreme Court to take lock stock and barrel what they alleged in that MR, without even asking for our comment, does not comply with the usual rules.

PCIJ: Just to go back to the timeline ... The denial was July 11. In the same ruling, there was an order for the respondents to comment.

Padilla: Correct.

PCIJ: And why were you not able to submit your comment?

Padilla: We are represented by law by the Office of the Solicitor General. The OSG of course submitted a motion for extension, which is a usual practice of the OSG, especially because the TRO was already denied, and they usually ask for a 30-day extension, and they did. I learned later that it was incorporated in that order granting the TRO, that it was granted. We have upto September 9 within which to comment.

PCIJ: The granting of the OSG's motion for extension was in the same ruling granting the

TRO.

Padilla: The granting of the extension is a normal practice. It's normally routine. What is unusual was the reversal of the denial of the TRO in the same period. Usually when the Supreme Court comes out with a resolution, you do not reverse or modify yourself later without asking the other party to comment.

PCIJ: Are you telling me that this has no precedence?

Padilla: Not that I know of. But I could be wrong, I have been out of practice for quite some time.

PCIJ: And you were saying that this reversal, and this unusual procedure ... you attribute this to extensive lobbying?

Padilla: Well either that, or to the Supreme Court taking a 360-degree turn and believing the allegations. For example, the Motion for Recon said that the milk companies would lose 9 billion simply for the destruction of their products, if I'm not mistaken. The IRR did not even touch on those. We are not even asking the milk companies to destroy their products. The IRR merely covers advertising, and promotional materials. If at all, what they will be changing are merely the labels. We will not ask them to destroy their products. They were also saying ... terminating their medical representatives. Look at the IRR, there's nothing in the IRR that indicates that they should terminate their medical representatives. In fact I even offered a suggestion to them ... The problem with the companies is that most of their medical reps are actually infant milk reps. And perhaps, I was suggesting, for them to retool their med reps into marketing their other products instead of infant formula. But nothing in our IRR suggests that they should terminate.

PCIJ: These arguments, you've heard all of these before.

Padilla: It's a scare tactic. They were also saying that this would create a lot of scarcity in infant milk. It's really scare tactic. Which the Supreme Court fell into.

PCIJ: They are also saying that you will deprive the public of access to information.

Padilla: That is a very ridiculous subject. What we are advocating is for them to provide scientific, factual and truthful information. When they say in their advertising that they're going to produce geniuses, that's not information. That's not factual, neither is it scientific. It's simple marketing. If they say that maybe you need infant formula because you have inverted nipples, or you have this disorder that may require a substitute then we would allow it. See that's their other scare tactic. They're saying that we have prohibited completely advertisements and promotions. We have not. What we have only prohibited are the exaggerated, unsubstantiated claims, that they have been doing for the past so many years. And we can prove that by their simple advertisements. Let's go over their

advertisements for the past five years. None of these advertisements talk about any unusual situation where infant formula may be needed.

PCIJ: What's the recourse now?

Padilla: The OSG is at the tail-end of their preparation of our motion to lift the TRO. I've also asked them that we will even willing to file a counter-bond. Because the Supreme Court allowed the milk companies to file a bond of 500,000 ... which is peanuts to them ... So we're telling the Supreme Court that we're even willing to double that amount if need be just so that they can lift the TRO, which is really causing a lot of deaths ... leading to a lot of infant deaths. After that, we are also filing our formal comment, by September 9, on the main petition. That's the most that we can do right now. Hopefully, the Supreme Court will lift the TRO.

PCIJ: Sec. Duque gave me information about lobbying efforts, that certain officials of the US Embassy and the US State Department approached health and trade officials, to express their concerns.

Padilla: Yeah, yeah.

PCIJ: Were you also approached at some point?

Padilla: Yeah. They have approached. I don't consider it as pressure but they have approached and they have expressed their concerns about these matters and of course they take the position of the milk companies. And of course I told them our position, and equally, they have accepted that position, at least when we were talking.

PCIJ: All of these conversations with these US officials, were they a contributory factor to the length of time that it took to have the IRR revised and signed?

Padilla: Well, yes and no. I don't know if it was contributory to the length ... I can imagine that they're doing the same discussions with other officials of government, and other officials may react in various ways. For example, when they talk to Sec. Duque and myself, separately, as far as I am concerned, it did not bother me. I'm open to talking to anyone, whether pro- or anti-, and I don't consider that as pressure. But I could imagine that certain other government officials might consider it as pressure, especially when they come imported, not only from the US Embassy, but outside. And then couple that with the position of the milk industry and the supposed income for the economy, I suppose that could create some kind of view or motivation for them to reject or deny the IRR. Plus of course the milk companies are also not alone. The Ad Board is also against us on this matter. So is the supermarkets' association. And maybe also it is partly our fault, we have been unable to put our message across clearly. We are against very powerful forces. Putting in so much money into the industry.

PCIJ: The Milk Code of 1986 is considered a landmark law. It was one of the victories as far as public health reforms are concerned. Would you say that after the passage of the Milk Code, the unbridled marketing was tamed? Was it able to considerably reduce the aggressive marketing?

Padilla: I don't know if considerably reduced. The marketing is still there. The product is still available in sachets, even in the remotest barrio. We have been unable to correct some of the advertisements and they still make those unsubstantiated claims. So I cannot really fault entirely the milk companies. I think it's also partly government's fault for not being able to implement the true intent, letter and spirit of the law, and have been bogged down by legal technicalities I think. Of course it's a marked improvement from when there was no law. But I think we have failed in much respects and that is why we needed this new IRR. After 20 years we felt that, the old law was already not commensurate to the existing standards of WHO. And we wanted to update that.

PCIJ: Would you say that there was a backsliding in the recent years? Or it was not successful to begin with?

Padilla: I suppose nag-improve. Pero, yun na nga ... Kasi going over the records ... It's such a big industry. For example, when I asked BFAD, the new products that they've introduced in the last five years was something like 139 new infant formula milk products. I only know of eight! When they say they've introduced 139, meaning to say, the milk companies have come up with subsidiaries, etc., and have come up with so many ...

PCIJ: 139 in the last 5 years.

Padilla: And to tell you frankly, I think the norm now is really more on infant formula rather than breastfeeding. And this is despite the fact that there was already the Rooming-in Act, and the Breastfeeding Act. I don't know. I can only attribute the situation to bad implementation by government, but also, aggressive marketing, and looking for loopholes in the law itself by milk companies that have contributed to this current state of affairs.

PCIJ: The national demographic survey says 16 percent of mothers ...

Padilla: Even lower than that. Exclusive breastfeeding. But I think you're only talking of one or two months. Not exclusive breastfeeding for six months. If you look at our most recent demographic survey by NSO, our most recent is 2004, it says that 77 percent of non-breastfeeding mothers are on infant formula. That would prove that infant formula, that is the norm. And that's really unfortunate. And this is also to dispute the contention of the milk companies, even in their petition, saying infant formula is not the problem but am is. They are saying that am -- evaporated or condensed milk mixed with water -- they're saying that's really the norm in the provinces, and you're going after the wrong target by going after the infant formula. Well, the demographic surveys show otherwise. The problem is infant formula. That is the problem. And we really have to crack down on

infant formula.

PCIJ: And with the revised IRR you were hoping to crack the whip on ...

Padilla: Yes, but not in the sense of prohibiting infant formula. Again I want to dissuade the thinking of the milk companies. Of course they're just saying that, they know the fact, that we are not prohibiting infant formula. What we are strictly regulating in the new IRR is the advertisements and promotions. And with that we are hoping that the tide will change. Because it is through their aggressive marketing that there is really that change.

PCIJ: Globally ... there are not many countries that are legislating the International Code, is that correct? Well, they are increasing in number ...

Padilla: Yes, correct, and some countries have even stricter than our revised IRR, four or five countries.

PCIJ: One of the arguments of the milk companies is also that the health department has usurped the mandate of Congress for amending laws.

Padilla: That's why precisely in the revised IRR, the title says, Revised Implementing Rules for Executive Order 51, for Relevant International Agreements. Under the Whereases of that revised IRR, and based on our Constitution, international law shall form part of the law of the land. That's why we've had on board as well Unicef and WHO, who have been fully supportive of our revised IRR. And they attest to the fact that we do not violate the World Health Assembly resolutions or the existing international agreements on infant and child feeding, which are all agreements also ratified by our Senate. So the good question ... that will be decided by the Supreme Court ... our feeling is that under our mandate, we are not only interpreting EO 51, but relevant international agreements forming part of the law of the land. And therefore we have that mandate. Of course we would prefer that Congress legislate the proper law. But even if they did not, we already have that mandate. That is our position.

PCIJ: As far as Congress is concerned, what are the prospects? There are bills now pending there.

Padilla: We are endorsing for example Cong. Bondoc's version. It needs some changes but we are endorsing that. We are also advocating some of the Senate proposals as well, Sen. Cayetano, on certain aspects, Sen. Roxas. Those are very good proposals but to tell you frankly I am not very hopeful as far as Congress is concerned. Because I think it's a body that is dominated by tobacco and milk lobbyists. Or if they should pass one, I don't think it will be up to our standards.

PCIJ: Breastfeeding advocates have also had some successes in their lobbying efforts. Getting the President to declare a Breastfeeding Week, the malls to have breastfeeding

stations ...

Padilla: It's not a contest between two positions that are equal in standing. It's not the same. We're talking about one that is truthful or factual -- regardless of what you may perceive the advocates are -- and fiction and falsity.

PCIJ: You're saying that what they're peddling is falsity.

Padilla: Of course. Our revised IRR declared that. We are in a dire situation as of present, we are in a situation whereby 16,000 deaths are being experienced yearly, that more and more women are now giving up breast milk ... The situation is tragic as it is desperate. If we continue this process, that soon it may reach 95 percent going on infant formula ... It's too sordid to even imagine that it will happen.