

## Stanford Medical Center Adopts Strict Policy Regarding Industry Gifts to Physicians

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Stanford University Medical Center (“Medical Center”) made waves in September 2006 by announcing a new policy, effective October 1, 2006, that prohibits almost anyone affiliated with the medical center from accepting gifts or compensation from representatives of pharmaceutical companies, medical device manufacturers, biotechnology companies, medical supply companies, etc. “The new policy prohibits physicians from accepting industry gifts of any size, including drug samples, anywhere on the medical center campus or at off-site clinical facilities where they may practice.”<sup>1</sup>

Though Stanford is not alone in adopting such a policy (medical centers at Yale and the University of Pennsylvania approved similar guidelines in the past two years), there is no doubt that it represents a sea change in the ethical assessment of the relationships between pharmaceutical companies and physicians. Dr. David Magnus, the director of the Stanford Center for Biomedical Ethics and a member of the committee that crafted the policy “said the new policy contained ‘just about everything I wanted’ and predicted that it would lead to ‘a pretty major change in our culture.’”<sup>2</sup>

While there seems little doubt that the issue of conflicts of interest in the relationship between physicians (both in clinical practice and in research) and pharmaceutical companies is of increasing interest, the very fact that the Stanford policy seems to be a paradigm shift is so remarkable signifies the level of enmeshment between pharmaceutical companies and physicians. More so, until quite recently, it has been difficult for doctors to understand the psychological effects that accepting gifts from pharmaceutical companies, even for items of little value, may have on their prescribing practices. One commentator observes that “the size of the gift does not determine the response; in other words, even gifts of negligible financial value can influence the behavior of the recipient in ways that the recipient does not realize.”<sup>3</sup> Dr. Howard Brody, Director of the Institute for Medical Humanities at the University of Texas Medical Branch, observed that “[e]vidence is steadily mounting that we physicians are, in fact, influenced by the industry's largess. The proof does not by itself matter. What matters is how blind we are to the fact that we are being influenced.”<sup>4</sup>

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<sup>1</sup> News Release, *New Stanford Medical Center Policy Limits Drug Company Access and Gifts*, available at <http://www.mednews.stanford.edu/releases/2006/september/coi.html> (last viewed Sept. 22, 2006).

<sup>2</sup> Andrew Pollack, *Stanford to Ban Drug Makers' Gifts to Doctors, Even Pens*, N.Y. TIMES, Sept. 12, 2006, at C2.

<sup>3</sup> Marshall B. Kapp, *Drug Companies, Dollars, and the Shaping of American Medical Practice*, 29 S.ILL. U. L. J. 237, 250 & n. 87 (2004-2005).

<sup>4</sup> *Id.*, citing Howard Brody, *A Matter of Influence*, 21 HEALTH AFFAIRS 232, 232 (2002). Dr. Brody is the author of a forthcoming book on the relationship between pharmaceutical companies and physicians, entitled *Hooked: How Medicine's Dependence on the Pharmaceutical Industry Undermines Professional Ethics*. The book can be viewed at <http://www.amazon.com/Hooked-Pharmaceutical-Undermines->

The fact that the Stanford policy is seen as revolutionary is itself proof of the relative blindness that has attended the deep entanglement between pharmaceutical companies and clinical practice. Part of the prevailing wisdom, which the Stanford policy challenges, is that conflicts of interest are permissible as long as they are properly disclosed or managed and do not influence physicians' care of patients. Dana and Loewenstein observe that "[t]he biasing effect of accepting gifts is treated as a matter of deliberate choice. The conventional perspective on accepting gifts implies that physicians who are biased by the prospect of personal gains are deciding to do something unethical."<sup>5</sup> This may be why the perception that small gifts are ethically permissible dominated thinking on this matter for so long. There seemed little reason why physicians could not manage the conflict by refusing to allow free pens and coffee mugs to influence their prescribing habits.<sup>6</sup>

Indeed, there is a sense in which the very idea that pens and mugs could influence physicians' care of their patients seems absurd and even insulting. As Dana and Loewenstein note, the fact that any influence of industry gifts was perceived as the result of a conscious, unethical decision "[u]ndoubtedly . . . contributes to the indignation with which many physicians respond when it is suggested that gifts create bias. Because the bias is seen as intentional, an allegation of bias is an implicit accusation of impropriety."<sup>7</sup>

Yet the best evidence on this subject suggests, in fact, that pens and mugs or other gifts of minimal value do have a significant influence on physicians. Katz et al. observe that

[w]hen a gift or gesture of any size is bestowed, it imposes on the recipient a sense of indebtedness. The obligation to directly reciprocate, whether or not the recipient is conscious of it, tends to influence behavior. Many social scientists believe that the predilection to reciprocate is an adaptive mechanism that has helped bind and advance human societies by enabling exchanges of food, skills, and goods.<sup>8</sup>

Similarly, another commentator observes that "gift giving nevertheless may mobili[z]e subtle influences that create social relationships with real obligations. No company gives away its shareholders' money in an act of disinterested generosity: industry invests in promotional activities because promotions increase sales, and do not intend to offer free lunches."<sup>9</sup>

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[Professional-Explorations/dp/0742552187/sr=8-1/qid=1159469887/ref=sr\\_1\\_1/104-5901200-8627133?ie=UTF8&s=books](http://Professional-Explorations/dp/0742552187/sr=8-1/qid=1159469887/ref=sr_1_1/104-5901200-8627133?ie=UTF8&s=books) (last viewed Sept. 28, 2006).

<sup>5</sup> Jason Dana & George Loewenstein, *A Social Science Perspective on Gifts to Physicians from Industry*, 290 JAMA 252, 252 (2003).

<sup>6</sup> Dana Katz, Arthur L. Caplan, & Jon F. Merz, *All Gifts Large and Small: Towards an Understanding of the Ethics of Pharmaceutical Gift-Giving*, 3 AM. J. OF BIOETHICS 39, 40 (2003) (citing evidence that physicians did not feel that accepting small gifts undermined their objectivity).

<sup>7</sup> Dana & Loewenstein, *supra* note 5, at 290.

<sup>8</sup> *Id.* at 41.

<sup>9</sup> Christophe Desmet, *Pharmaceutical Firms' Generosity and Physicians: Legal Aspects in Belgium*, 22 MED. & L. 473, 478 (2003).

It is plausible to argue that considerations like these animate the Stanford policy, and that relatively strict prohibitions on most forms of pharmaceutical gift-giving were not perceived as needed in the past because the influence of such gift-giving on physicians was denied, downplayed, or altogether ignored. Indeed, if Dana and Loewenstein are right, policies that resemble the Stanford effort might even have been considered insulting to physicians insofar as they implicitly deny the notion that the conflict of interest only becomes unethical if the physician makes a conscious choice to allow pecuniary effects to sway his/her influence.<sup>10</sup>

Scott Lassman, an attorney for the Pharmaceutical Research and Manufacturers of America (“PhRMA”) was quoted in the N.Y. Times article as stating that the Stanford policy was “‘a disservice to patients and physicians’ because they keep doctors from interacting with sales representatives. ‘The company sales representatives, in our point of view, have a lot of useful information on drug products and how to use them, and how not to use them . . . .’”<sup>11</sup> Of course, this argument is somewhat circular, because it assumes that it is appropriate for physicians to obtain information regarding drug products from the pharmaceutical sales representatives themselves. The bare fact that many physicians do in fact obtain information about pharmaceuticals from sales representatives does not imply that such practices are beyond ethical reproach or, at a minimum, ethical concern.

A 2005 article in the Yale Journal of Health Policy, Law & Ethics reported that the practice of detailing, defined as “the marketing efforts directed at physicians comprise[d] by] personal selling through sales representatives,”<sup>12</sup> “does have a significant effect on physician prescription behavior.”<sup>13</sup> Indeed, Parker & Pettijohn note that “doctors who have had contact with pharmaceutical representatives were 13 times more likely to ask that a particular drug be added to an insurance plan’s list of approved drugs.”<sup>14</sup>

These effects are perceptible even when physicians are aware of potential conflicts of interest.<sup>15</sup> The article notes the apparent anomaly between the fact that if “the role of detailing is to provide information, its effect should die out soon after launch,”<sup>16</sup> and the “existence of a positive detailing effect in the late stages of the [drug] life cycle.”<sup>17</sup> Akin to the relationship factors that Katz et al. perceive as important in the gift-giving and gift-receiving relationship,<sup>18</sup> Machanda & Honka posit that

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<sup>10</sup> Dana & Loewenstein, *supra* note 5, at 290.

<sup>11</sup> Pollack, *supra* note 2, at C2.

<sup>12</sup> Puneet Machanda & Elisabeth Honka, *The Effects and Role of Direct-to-Physician Marketing in the Pharmaceutical Industry: An Integrative Review*, 5 YALE J. HEALTH L. POL’Y & ETHICS 785, 785-86 (2005).

<sup>13</sup> *Id.* at 809.

<sup>14</sup> R. Stephen Parker & Charles E. Pettijohn, *Ethical Considerations in the Use of Direct-To-Consumer Advertising and Pharmaceutical Promotions: The Impact on Pharmaceutical Sales and Physicians*, 48 J. BUS. ETHICS 279, 283 (2003).

<sup>15</sup> Machanda & Honka, *supra* note 12, at 809.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 810.

<sup>18</sup> Katz et al., *supra* note 6 and accompanying text.

the constant interaction builds a stock of goodwill between a detailer (or the firm) and the physician. This goodwill is not based on purely objective and rational factors but on social and cultural ones. Its character changes from informative to more persuasive in the later stages of the drug's life cycle.<sup>19</sup>

Thus, even if it were beyond ethical concern for physicians to obtain information regarding drug products from pharmaceutical sales representatives, there is reason for doubting that the relationship between sales representatives and physicians is neutral and informational rather than rhetorical at certain points in the drug life cycle.<sup>20</sup>

While the influence of the Stanford policy remains to be seen, a September 16 editorial the L.A. Times urged other hospitals and academic medical centers to follow Stanford's lead.<sup>21</sup> In any event, the Stanford University Medical Center is to be commended for weighing the issues so seriously, and for acknowledging the basic accuracy of the proposition that if small gifts had absolutely no influence on physician practices, market-savvy pharmaceutical companies would be highly unlikely to narrow their margins by wasting millions of dollars a year on such gifts.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Stop the Drug Industry Swag*, L.A. TIMES, Sept. 16, 2006.