



Client Alert

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New Jersey Attorney General Recommends New Physician Gift Ban and Conflict of Interest Regulations

On December 3, 2009, the New Jersey Attorney General released a report entitled "Report on Physician Compensation" (the "Report") authored by the Division of Consumer Affairs. The Report recommends the drafting of regulations governing the financial relationships between physicians and pharmaceutical and device manufacturers. The proposed regulations would ban physicians from accepting certain gifts, meals, fees, or travel expenses from any pharmaceutical or medical device manufacturer. In addition, the proposed regulations would require physicians to publicly disclose any consulting fees, honoraria or funding for research or education in amounts of \$200 or more.

The Report recognizes the national debate on physician compensation and national efforts taken to reshape the relationship between industry and physicians. For instance, the Pharmaceutical Research and Manufacturers of America (PhRMA) and the Advanced Medical Technology Association (AdvaMed), the two leading industry associations for drug and device companies, have adopted voluntary codes of conduct regulating interactions with healthcare professionals, including gifts and meals. According to the Report, the proposed regulations are intended to complement and advance such ongoing efforts to curtail gift-giving and mandate disclosure of other financial interests. However, if implemented, the proposed regulations would go beyond the industry codes, banning all food except at accredited continuing medical education events where physicians must pay the fair market value of meals provided. Moreover, while other states have imposed similar bans on gifts and implemented disclosure requirements, New Jersey would be the first state to impose restrictions and obligations directly on physicians if it adopts the regulations recommended in the Report.

The Report recommends certain amendments to the New Jersey Board of Medical Examiners ("BME") regulations including, but not limited to, the following:

- **Gifts.** The Report recommends that BME regulations be amended to prohibit a physician from accepting from any pharmaceutical or medical device manufacturer any of the following: (1) payments, including tuition, fees, travel, lodging or other incidental expenses, to support attendance as a participant at an accredited continuing medical education ("CME") program; (2) fees, travel, or lodging reimbursement for

non-faculty or non-consultant attendees at company-sponsored meetings; (3) items intended for the personal benefit of a physician (such as floral arrangements, artwork, CDs, DVDs or tickets to a sporting event), or items that may have utility in both the professional and non-professional setting (such as a DVD or a CD player); (4) payments in cash or a cash equivalent (such as a gift certificate) unless it is compensation for bona fide services such as serving as a consultant or participating in research or publication activities; and (5) company-funded entertainment or recreational items, unless the physician is a salaried employee of the manufacturer.

- **Meals.** The Report recommends that BME regulations be amended to: (1) prohibit physicians and office staff from accepting food from manufacturers, whether in-office, at health care facilities or in commercial venues; (2) require physicians attending unaccredited educational or promotional sessions organized by manufacturers at which meals are served to pay the fair market value for the meals; and (3) allow the receipt of modest meals at continuing medical education seminars, third-party conferences and professional meetings accredited by the Accreditation Council for Continuing Medical Education, where the provision of meals facilitates the scheduling of the educational program to maximize physician learning, and where such meals are provided at the discretion of the CME provider, and are not paid for directly by manufacturers.
- **Free Samples.** The Report recommends that BME regulations permit continued receipt of sample medications by physicians for the exclusive benefit of patients.
- **Disclosure Obligations.** The Report recognizes that physicians should be allowed to serve as consultants to manufacturers, participate in the development of new treatments and therapies, and provide training on behalf of the companies. However, the Report recommends that BME regulations mandate that physicians disclose whether they accepted more than \$200 from manufacturers, whether in cash, food, travel, consulting fees, research funding, or any other economic benefit, every two years as part of the license renewal process. The required disclosure would include the name of the company, the value, date and nature of the payment, and if applicable, the name of the product, and whether the payment is related to marketing, education or research pertaining to a specific drug, device, biological or medical supply. The Report also recommends that the State enact legislation requiring manufacturers to disclose payments and other things of value made to physicians, physician practices and physician groups.
- **CME.** The Report recommends that BME regulations be amended to: (1) provide credit only for those CME courses that meet the Accreditation Council for Continuing Medical Education or American Osteopathic Association standards that specifically bar the CME provider from obtaining advice from a subsidizing company as to faculty or content; (2) impose an obligation on physicians who are engaged as CME speakers to directly disclose to attendees, at the beginning of the presentation, the receipt of reportable compensation from manufacturers; and (3) initiate a requirement that 25% of

CME be obtained in evidence-based educational programs or through academic detailing.

- **Data Mining.** The Report recommends strict controls on the use of physician prescription information. The Report recommends that BME regulations be amended to provide that all doctors be notified when renewing their licenses of their right to opt out of having information about their prescribing sold by pharmacies to healthcare information organizations. In addition, the Report recommends that the New Jersey Board of Pharmacy regulations be amended to require pharmacies to maintain documentation confirming that prescribers have consented to the sale of their prescribing information. The Report also recommends the enactment of legislation to restrict the transfer, use or sale of prescriber-identifiable prescription information for commercial purposes.
- **Physician Accountability.** The Report recommends that BME regulations be amended to prohibit physicians from: (1) recklessly providing inaccurate and misleading information in educational or promotional venues; (2) claiming authorship of any article or study unless they, in fact, authored the work in question; and (3) misrepresenting financial interests in any required disclosure form, including through the omission of required information.

The Report also addresses concerns regarding academic detailing and the potential conflict of interest that may arise in academic medical centers, hospitals, and other healthcare institutions licensed by the New Jersey Department of Health and Senior Services (DHHS). A copy of the Report is available at [here](#).

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