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Legal Insights

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Chinese Authorities Detain a Global Pharmaceutical Company's Employees for Bribery

A growing number of global pharmaceutical and medical device companies are facing bribery and corruption accusations in emerging markets such as China and India, where bribes and kickbacks are increasingly common. This issue most recently came to light in early July, when Chinese officials allegedly detained several employees of a large global pharmaceutical company, including at least one foreign executive, in the Chinese cities of Changsha, Shanghai, and Beijing.

Although the company has not yet responded to the detainment as of this article's publication, it had allegedly earlier terminated its head of research and development in China, upon discovering that he co-authored a scientific paper containing false data. According to sources, the company also announced it was conducting an internal investigation of company sales tactics in China, after an anonymous whistleblower had claimed that salespeople had been offering physicians speaking fees and expensive meals and trips to increase prescriptions of the company's products.

The Foreign Corrupt Practices Act

Due to these and similar corruption allegations, many companies remain in the crosshairs of the Foreign Corrupt Practices Act (FCPA) enforcement, which prohibits companies from bribing foreign government officials, including physicians employed by foreign governments and government hospitals.

The following examples illustrate key stages in the pharmaceutical and medical device development process that require particular awareness of FCPA enforcement issues, as they often require interaction with foreign government officials:

- Pre-Clinical and Clinical Trials
  - Submitting testing to authorities and to Institutional Review Boards (IRBs) for review;
  - Registering trials on government websites;
  - Recruiting and compensating subjects or investigators who may be employed by a government; and
  - Reporting Adverse Events (AEs) and safety issues to foreign authorities.

- Product Reviews by Foreign Governments
  - Any formal or informal meetings with foreign officials, including those involving meals; and
  - Dispute resolutions with foreign authorities.

- Manufacturing
  - Registering establishments;
  - Government inspections of establishments;
  - Listing or registering drugs and devices; and
  - Notifying authorities of any product-related dangers or safety issues.

- Promoting
  - Paying or reimbursing physicians employed by a government who have the ability to prescribe a drug or medical device or to otherwise influence patients;
  - Compensating government officials who have authority to determine whether a product is covered by government insurance; and
  - Responding to enforcement issues.

- Importing and Shipping Products to Foreign Entities
  - A foreign government may sample, test, or detain products to verify compliance when the product is imported; and
  - Foreign governments may need to be notified when the product is exported.

Companies that sell their products to third parties who conduct the above acts may still be liable for third party actions

Local Law

Companies must also be cautious not to violate local criminal law prohibiting bribery. In China, for instance, "[w]hoever offers or introduces a bribe to a state functionary shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention."

Enforcement of the FCPA continues to be a high priority area for the U.S. government. Pharmaceutical and medical device companies should remain vigilant during any interaction with foreign government officials, even if the company's intent is not to bribe.