

Creating Ethical Incentives for the Pharmaceutical Industry: Reality or Fantasy?

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Outline

- Access to medicines
- Good governance
- Protecting patient safety
- Protecting research subjects
- Undue industry influence on physicians
- Codes of conduct and international standards
- Concluding remarks

Access to Pharmaceuticals

- Pharmaceuticals are indispensable to health systems
- Curative and therapeutic qualities
- Not ordinary commodities
- Health is not a luxury
- 1/3 of the world lacks regular access
- 1/2 lack access in parts of Asia and Africa

World Health Organization. 2004. WHO Medicines Strategy: Countries at the Core, 2004-2007. WHO/EDM/2004.5

Access to Medicines: a Human Right

- Article 12, UN International Covenant on Economic, Social and Cultural Rights
- "...right of everyone to the enjoyment of the highest attainable standard of physical and mental health"
- Right to availability of essential medicines (as defined by WHO)

UN Committee on Economic, Social and Cultural Rights (CESCR). 2000. General Comment 14, "Substantive issues arising in the implementation of the ICESCR", E/C.12/2000/4, 11 August 2000.

Access to Medicines: a Human Right

- State must ensure pharmaceutical system is
 - Institutionally sound
 - Transparent
 - Mechanisms to reduce likelihood of corruption or undue influence
 - Sufficient regulation of the pharmaceutical industry to ensure "ethical" corporate behavior

Some issues

- Unethical practices by the industry include
 - Lack of integrity pricing
 - Excessive marketing of "me-too" drugs
 - "Purchasing" of prescription patterns
- 3rd highest profits (% of revenues) in 2004
 - 15.8%

Fortune (2005). "Fortune 500: How the industries stack up: most profitable industries. April 18, pF-28"

Good Governance

- Transparency
- Accountability
- Institutional pluralism
- Participation
- Rule of law

Leisinger KM. (2004) Overcoming poverty and respecting human rights: ten points for serious consideration. UNESCO, Blackwell Publishing Ltd.

Drug Registration

- Evaluation of product's efficacy and safety
- Indications for use
- Ensuring appropriate labeling and warnings
- Restrictions on marketing and prescribing
- Primarily government regulation

Cohen JC. (2003). "Government and Market Failures in the Pharmaceutical System: Partial Explanations towards Understanding the Troubling Drug Gap". Intellectual Property and International Public Health Conference, Washington, D.C., October 8, 2003.

Merck and Vioxx

- Merck's internal documents acknowledged risks
- Encouraged sales representatives to downplay physician concerns
- Prioritizing profits over patient safety?
- Did they mislead physicians and the public?
- Industry failure?

The FDA and Vioxx

- February 2001 FDA internal review
- April 2002 mandated warnings
- September 2004 APPROVe Trial
- Lack of good governance
- Risks identified early on
- Lack of transparency and effective leadership
- Will we see accountability and the rule of law?

Changing Research Environment

- Industry intertwined with academe and regulatory bodies
 - Regulations adapted to accommodate drug innovation and development
 - Regulations to protect patient and research subject safety are failing
- Strengthen institutions, regimes and ensure adequate checks and balances

Lemmens T. (2004). Leopards in the temple: restoring scientific integrity to the commercialized research scene. *Journal of Law, Medicine and Ethics*, Winter, pp 2-18.

Unethical Research Practices

The issue of protecting research subjects in developing countries

Lack of Regulation in a Booming Industry

- Weakness of institutions and administrative capacity
- 25% of 203 researchers in developing countries stated “their studies did not undergo an ethics review by an IRB, ethics board, or Ministry of Health in the country.”
- Increased outsourcing of clinical trials
- India: US\$75 mil → \$280 million (2010)
- Ethical review capacity in developing countries needs significant development

Hyder AA, Wali SA, Khan AN, Teoh NB, Kass NE, Dawson L. (2004). Ethical review of health Research: a perspective from developing country researchers. *Journal of Medical Ethics* 30; 68-72.

Outsourcing Clinical Trials

- Maxim Pharmaceuticals (California)
- In 1999, FDA requested further animal testing
- Maxim conducted clinical trials in Russia without informing physicians about FDA decision
- Met local requirements, did not breach FDA regulations
- Double-standard for patient safety
- Importance of developing institutional capacity in developing countries

Flaherty MP, Nelson D, Stephens J. 2000. The Body Hunters: Overwhelming the Watchdogs. *The Washington Post*. December 18, A01.

Undue Industry Influence on Physicians

Physician-Industry Interface

- Interface has potential for unethical practices
- Wazana: physician-industry interaction
 - increased requests for drugs on hospital formularies and changes in prescribing
- Industry has sophisticated marketing techniques
- Sponsors CME, pharmaceutical detailing, free drug samples, expensive dinners, gifts and trips

Wazana A. (2000). Physicians and the pharmaceutical industry: is a gift just ever a gift? *JAMA*. 283:373-80.

Warner-Lambert

- In 2004, criminal charges of \$430 million
- off-label promotion of anti-epileptic Neurontin
- “solely for adjunctive or supplemental anti-seizure use by epilepsy patients”
- off-label including bipolar disorder, ADD, migraine
- Charged with “widespread, coordinated national effort”
- Rule of law, enforce standards, penalize

US Department of Justice. 2004. Warner-Lambert to pay \$430 million to resolve criminal and civil health care liability relating to off-label promotion. Press release, May 13, 2004.

Physician-Industry Interaction in Developing Countries

- Gifts or bribes supplement paltry salaries
- Aggressive marketing frequently cited
- Unethical promotion
 - expanding indications, exaggerating therapeutic efficacy, downplaying risks and adverse effects
- WHO study of industry drug information materials (India) discrepancies between claims and scientific data
- Little monitoring, enforcement
- Importance of civil society, media, participation

Gopalakrishnana S, Murali R. (2002). India: campaign to tackle unethical promotion. *WHO Essential Drugs Monitor*, Issue No. 31.

Codes of Conduct

- American Medical Association (AMA)
- “Any gifts accepted by physicians individually should primarily entail a benefit to patients and should not be of substantial value. Accordingly, textbooks, modest meals and other gifts are appropriate if they serve a genuine educational function. Cash payments should not be accepted.”

American Medical Association (AMA). 2004. AMA Code of Medical Ethics: E-8.061: Gifts to physicians from industry.

Codes of Conduct

- IFPMA Code of Pharmaceutical Marketing Practices
 - defines universally applicable standards
 - Apply to any company belonging to at least one member association in all countries where that company conducts business
 - Licensees and agents entering into agreements must also respect code

Canada's Research-based Pharmaceutical Companies. (2005). Code of marketing practices. Retrieved from: http://www.canadapharma.org/Industry_Publications/Code/code_e05Jan.html [15 March 2005].

Codes of Conduct

- Self-regulatory codes delay meaningful reform
- Voluntary codes not audited, enforced, or overseen
- Profit-maximizing nature of the industry
- Regulations may be corrupted by own members
- More robust policies
- Incentives for actions in favor of public interest

International Policy Initiatives

- Same standards for governments and business enterprises
- UN Global Compact (2004)
 - Voluntary international corporate network which seeks to advance responsible corporate citizenship
 - Principle 10: “(t)he promotion and adoption of initiatives to counter all forms of corruption, including extortion and bribery.”

United Nations. (2003). “The Global Compact: the Ten Principles”. E/CN.4/Sub.2/2003/12/Rev.2.

International Policy Initiatives

- UN Economic and Social Council, 2003
- “Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights”
- Consumer protection obligations for TNCs
- To “act in accordance with fair business, marketing and advertising practices...”
- Good intentions but lack requisite “teeth”

UN Subcommission on the Protection and Promotion of Human Rights. (2003). E/CN.4/Sub.2/2003/12/Rev.2.

Concluding Remarks

- Make individuals accountable (e.g. CEOs)
- Improve transparency
- Honest assessment of institutional robustness of all core pharmaceutical decision points
- Consumer group monitoring
- Statements and guidelines: not enforceable
- Individual governments need the courage to act