

August 31, 2011

The Honorable Margaret A. Hamburg
Commissioner
U.S. Food and Drug Administration
White Oak Building I
10903 New Hampshire Avenue
Silver Spring, MD 20993
Via Email: Margaret.Hamburg@fda.hhs.gov

Dear Commissioner Hamburg:

The Association of Clinical Researchers and Educators (ACRE) is a non-profit organization founded by medical professionals who recognize that appropriate industry collaborations and relationships benefit patients and advance science. ACRE strives to define and promote balanced policies at academic medical centers and within government to enhance positive, well-managed research and educational partnerships between industry and physicians.

We are writing to support reforms to the Food and Drug Administration's (FDA) conflict of interest standards recently proposed by Dr. Janet Woodcock, Director of the Center for Drug Evaluation and Research (CDER). ACRE strongly encourages FDA to adopt updated policies that ensure experts with the highest scientific and clinical qualifications are actively recruited to serve as advisory committee members.

Given that the FDA regulates more than 150,000 marketed drugs and medical devices, with nearly 3,000 investigational new drugs being developed at any given time, outside experts with specialized knowledge are crucial for an effective and efficient review process. Advisory committees provide independent advice and invaluable insight to assist with regulatory decision-making processes and support sound decision-making by the FDA.

In 2007, FDA adopted new conflict of interest standards that set an arbitrary financial threshold for committee participation. Experts with personal or family financial interests above \$50,000 are excluded from serving as committee members, and even if conflicts are resolved, they must wait at least one year before being permitted to serve. Those with interests below the threshold are allowed to serve, but are stripped of their voting rights.

Despite claims to the contrary by self-described "watchdog" groups, the evidence clearly demonstrates that committee vacancy rates have steadily increased since adoption of these policies. As you may already know, the most recently released data for overall FDA committee membership from the third quarter of 2010 show vacancy rates ranging from 25% to 27%. The Center for Biologics Evaluation and Research (CBER) vacancy rates are markedly worse, reaching 32% for the last three months of 2010.

These rising vacancies demonstrate the unintended consequences of overly restrictive conflict of interest policies. Both government and industry rightfully seek out accomplished leaders in many fields for their expertise. Excluding a portion of these leaders because they have collaborated with industry to promote advancements in science and health is hindering the FDA's ability to meet its responsibilities to patients. Product reviews are being unnecessarily delayed along with patients' access to new therapies and medical devices.

Data obtained by both critics and supporters of industry collaboration consistently reveal that industry consultants are often the most qualified and prominent physicians and productive researchers. Moreover, detailed analysis of FDA panels' recommendations reveals no effect of industry relationships on panel members' voting behavior.

A study of voting behavior by FDA panelists enabled by the Freedom of Information Act and performed by the industry-wary Public Citizen group clearly revealed no statistically significant effect of industry consulting relationships on such behavior (*JAMA* 295: 1921-1928, 2008). These findings are hardly surprising, since other research (also performed by industry critics) consistently shows that industry consultants are the most productive researchers, (*JAMA* 287: 473-480, 2002; *Health Aff* 28: 1814-1828, 2009) whose value to any sponsor depends on their integrity.

ACRE recommends that advisory committee members should be chosen based on their direct experience with, and expert knowledge of, the specific technology under review. ACRE supports a transparent evaluation process under which remuneration from for-profit and non-profit entities is examined and made available to the public. Relationships that create direct financial conflicts of interest from such entities should be disclosed to be eligible for participation, but should not singularly exclude participation. Other conflicts, including perceived conflicts, should not be used as exclusion criteria.

We urge the FDA to further scrutinize the impact its current conflict of interest policy is having on product reviews and approvals and make the appropriate adjustments.

Sincerely,

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cc: Chair and Ranking Member, House Energy and Commerce Committee
Chair and Ranking Member, Senate Finance Committee
Chair and Ranking Member, Senate Aging Committee
Chair and Ranking Member, Senate HELP Committee

About ACRE

ACRE stands for Association of Clinical Researchers and Educators. ACRE is a non-profit professional organization consisting of physicians from HMS, SUNY Downstate and the Mayo Clinic and logistically managed by Rockpointe, a medical education company.

ACRE is a forum for what we believe is a hitherto silent majority of individuals engaged in clinical service, medical education and medical innovation ready to oppose (but not debate) a small but well organized and well-funded coterie responsible for an anti-industry movement.

This movement has inverted reality by extrapolating from an astonishingly small number of adverse events related to industry compared to the incontrovertible evidence of social good that has eventuated from thousands of industry actions over my lifetime in medicine. The movement particularly demonizes industry marketing, despite the lack of any evidence that, on balance, such marketing impacts anything but positively on patient care.

The movement's success rests in part from its tactical skill. Its initial target, gifts and meals, were too trivial to oppose. But by conceding trinkets, physicians and industry tacitly admitted to an "ethics" problem justifying further sanitizing of medicine from commercial influence. The movement's success lies also in the preoccupations of physicians with service, education and innovation, who abdicate policy authority to others. The appointed leaders, caught in the crossfire between the critics, the media and demagogue politicians, care more about avoiding attention from Senator Grassley and the New York Times than about service, education and innovation. The movement also panders to archaic notions of professionalism rooted in pre-scientific medicine and based on contempt of business and trade.

The movement has therefore succeeded in goading medical leaders to impose increasingly onerous regulations on physicians and researchers. These rules include forced confession (massive disclosure), censorship (limits on writing, speaking or advising) and coercion (restrictions on association, action and rewards). These rules have no basis in empiric fact and have no benefits. The movement is deeply disrespectful of physicians and industry alike. It is hypocritical, because it has its own conflicts of interest in that its members gain power and wealth by controlling medical education and by managing conflicts of interest. And it has costs: the regulations in force and desired will decrease medical education and innovation.

The movement's overreach, however, has finally begun to dawn on the rank and file. In particular, working physicians are becoming aware of the confusion and potential for embarrassment and even litigation embedded in the soon to be enacted Massachusetts State regulations and how bans on product-based (promotional) speaking will affect their life and livelihood.

Since the purpose of ACRE is to affirm the value of physician-industry interaction, industry is an unabashedly welcome participant. Industry can help us identify physicians with whom it collaborates, provide financial support and provide useful information. As partners, physicians and industry can potentially evolve more effective, more academic and less controversial modes

of interaction that are consistent with federal regulations. A particular example is the use of visual aids in promotional speaking.

We have already recruited individuals from pharmaceutical, biotech and device industries as well as physicians who work.