

March 19, 2008

The Honorable Mervyn Dymally, Chair  
Assembly Health Committee  
State Capitol  
Sacramento, 95814

Re: SUPPORT/SPONSOR – AB 2821 (Feuer)

Dear Chairman Dymally,

CALPIRG is a statewide membership-based public interest group that stands up to powerful interests, working to win concrete results for Californians' health and well-being. With researchers, advocates, organizers, and students, we advocate on behalf of consumers and all California's residents.

There are few products as important to consumers' well-being as prescription drugs. Properly prescribed and used, these medicines can provide great help to patients. But drug makers have not been content to rely solely on the medical benefits to sell their products. Instead, they employ a sophisticated apparatus aimed at marketing to the doctors who prescribe their drugs, urging them to prescribe the newest, most expensive, least-tested drugs.

These promotional efforts include brigades of marketing representatives called "detailers," who lavish gifts and free meals on the doctors they woo, as well as sponsorship of expense-paid trips to continuing medical education programs that tout the benefits of company-produced drugs, and a web of speaker honoraria and consulting fees that reward doctors for extolling a drug's virtues to their fellow practitioners.

The result is that doctors looking for objective information about the efficacy and safety of pharmaceuticals are ensnared by this system, and find it increasingly easy to look only to the friendly drug representative who comes bearing free food and other gifts, rather than trying to find the time to confirm all their claims by examining the peer-reviewed literature.

The scope of pharmaceutical marketing is often breathtaking. In 2004, drug companies employed over 100,000 detailers (the number of their targets – office-based physicians – was roughly 500,000).<sup>1</sup> That year the average primary care doctor had 28 interactions with a drug

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<sup>1</sup> The Prescription Project, THE CONSTITUTIONAL BATTLE OVER STATE REGULATION OF DATA MINING (Aug. 2007), available at [http://www.prescriptionproject.org/tools/solutions\\_resources/files/0005.pdf](http://www.prescriptionproject.org/tools/solutions_resources/files/0005.pdf).

company detailer every week.<sup>2</sup> Drug company marketing is not a once-every-few-months phenomenon; it is a concerted, systematic, expensive campaign directed squarely at the doctor's office.

These marketing practices would be objectionable even if the information pharmaceutical company representatives provide was scrupulously accurate. But CALPIRG research has shown that drug marketing efforts are often false or misleading. In our survey of FDA enforcement letters from 2001 to 2005, for example, we found that pharmaceutical sales reps misstated the results of clinical studies, misrepresented the risks of their products, and urged doctors to prescribe medicine for non-FDA-approved uses.<sup>3</sup> We found as well that misleading and false information was provided to doctors not just in the context of one-on-one detailing visits, but also at the panels and conferences drug companies often sponsor.<sup>4</sup>

In short, currently doctors' decisions about what drug to prescribe for a patient's symptoms aren't based simply on state-of-the-art medical knowledge – rather, a barrage of gifts, payments, and questionable information tilts the playing field towards the newest drugs behind which the big companies are throwing their marketing muscle.

Consumers pay for these practices in two ways. First, the \$27 billion the drug industry annually spends on marketing is ultimately passed on to consumers in the form of increased drug prices.<sup>5</sup> Second, the new drugs doctors are urged to prescribe are universally more expensive than older, established treatments, but may be no more effective, and in fact may be more dangerous, since there has been less time to monitor the newer drugs for deleterious side effects.

These are not new problems. Indeed, in 2004, we sponsored SB 1765, which required drug companies to self-regulate by voluntarily setting an upper limit on the dollar value of gifts they could give to a doctor in a given year. Because of SB 1765, we now have a better sense of the scope of the problem – and how it is getting worse. The first year that the law went into effect, for example, Pfizer set its limit at \$960 per doctor per year.<sup>6</sup> In 2006, they increased the limit to \$2,500; it currently stands at \$3,500.<sup>7</sup>

These increases greatly outpace inflation, of course, reflecting the fact that the drug companies are increasingly relying on promotional spending to maintain their profits in the wake of drug safety scandals and with fewer new “blockbuster” drugs coming down the pipeline. The predictable results – ever-greater marketing-related intrusions into a doctor's decision of which drug to prescribe – will lighten consumers' wallets and even harm their health.

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<sup>2</sup> *Id.*

<sup>3</sup> See CALPIRG Education Fund, TURNING MEDICINE INTO SNAKE OIL (May 2006), available at <http://www.uspirg.org/home/reports/report-archives/health-care/health-care/turning-medicine-into-snake-oil-how-pharmaceutical-marketers-put-patients-at-risk>.

<sup>4</sup> *Id.*

<sup>5</sup> See DATA MINING, at 4.

<sup>6</sup> See *Rx Compliance Report*, Vol. IV, Issue 12 (July 21, 2005).

<sup>7</sup> See Pfizer Corporate Compliance Program, at

[http://www.pfizer.com/responsibility/values\\_commitments/pfizer\\_corporate\\_compliance\\_program.jsp/](http://www.pfizer.com/responsibility/values_commitments/pfizer_corporate_compliance_program.jsp/)

For these reasons, we are sponsoring AB 2821 (Feuer). AB 2821 is a reasonable, practical effort to address the problem of excessive drug company marketing. First, rather than allowing the manufacturers to set their own spending limits, the bill will cap the aggregate monetary value of the gifts drug companies may give to \$250 per doctor per year. This will allow the drug companies to distribute a modest amount of promotional materials, and pick up the tab for a lunch meeting or two, while prohibiting lavish spending that has no legitimate informative purpose. The caps will also mean that drug companies will have to compete on the benefits of their products, rather than the cash they spend marketing them, and limiting the amount of money that may be spent will help contain the rising costs of prescription drugs.

Second, the bill will require the public reporting of gifts and non-gift expenditures, such as speaker or consulting fees, that drug companies give to doctors. Disclosure of the recipients of drug company largesse will help identify potential conflicts of interest, as well as allowing members of the medical community to better audit their level of involvement with the drug industry. The reporting requirement will also help ensure that the gift limit is complied with. Finally, public disclosure of the payment information will help patients make their decision when picking a doctor.

These two elements, taken together, will move us towards a world where drug company interactions with doctors are more professional, with junket-style trips and the constant barrage of gifts and meals off the table. Limiting these gifts will also limit the overall dollars spent on marketing, which have been one source of the upward pressure on prescription drug prices. Finally, and most importantly, taking these extravagant marketing efforts out of the doctor's office means that when it's time to prescribe a drug, the doctor will be more likely to choose the safest, most reliable, and cost-effective treatment available, rather than the untested, new one just pitched by a drug company detailer.

We urge you to support AB 2821. Your committee's approval of the bill will help ensure that Californians have access to the safe, affordable prescription drugs that they deserve.

Sincerely,

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