

# Letting the Sunshine In: The Implications of Transparency for the Practice of Medicine

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## **No Financial Conflicts of Interest to Disclose**

**David Rothman has served as consultant and expert witness for the Attorney General of the State of Texas and the Philadelphia law firm of Sheller in their litigation against Johnson & Johnson related to the marketing of Risperidone.**

# THE THEORY OF TRANSPARENCY

*“Sunlight is said to be the best of disinfectants; electric light is the most efficient policeman.”*  
(Justice Louis Brandeis)



- People behave best when closely watched
- The concept first took hold in government, went on to affect industry, then other social institutions, and now, finally, is beginning to take hold in medicine.

# TRANSPARENCY

- Transparency is contagious. Following on FOIA, federal and state governments enacted **sunshine laws** to open up administrative meetings once held behind closed doors.
- Transparency is controversial: Wikileaks.
- Transparency is global. Some 90 countries around the world, including China, have FOIA-type legislation.

# TRANSPARENCY

**Transparency produces data as well as information.**

- Automobile manufacturers must put stickers on the windows of new cars detailing roll-over test results.
- Food manufacturers and chain restaurants must report fat, calorie, sugar, and salt content of their products.
- Not-for-profit organizations must make public salaries of their chief executives and five highest paid earners.
- Public companies must provide profit, loss, and expenditure data and describe fully potential risks and returns when they float new stocks.

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# BRINGING TRANSPARENCY TO MEDICINE: FINANCIAL DATA ON PHYSICIANS AND COMPANIES

**Over the past five years, a revolution has occurred in the disclosure of doctor/company financial arrangements.**

# FEDERAL INITIATIVE



## Physician Payments Sunshine Act of 2009:

To amend title XI of the Social Security Act to **provide for transparency in the relationship between physicians and manufacturers** of drugs, devices, biological, or medical supplies for which payment is made under Medicare, Medicaid, or SCHIP.

# IMPLICATIONS OF THE NEW TRANSPARENCY

- For the first time, full and accurate data on company payments to physicians and health care organizations, independent of individual disclosures.
- No one has disputed the accuracy of company figures as reported on websites or to states.
- What you take/receive is now public information.



# Strengths of Sunshine Disclosure Requirements

- Covers physicians, dentists, optometrists, chiropractors
- Threshold is low: \$10 (sandwich lunch)
- Includes monetary (fees, royalties) and non-monetary (books, tickets)

# Shortcomings of Sunshine Disclosure Requirements

- Exempts medical residents
- May CME third-party payments
- Exempts samples, the entry key for sales reps

# IMPLICATIONS OF THE NEW TRANSPARENCY

## Will Transparency Change Practices?

*Perhaps Not:*

- Very few resignations from Speakers' Bureaus as companies post payouts
- Suggestions that seeing colleagues' compensation will drive up your own demands
- Consumers do not use databases very well
- Consulting the databases, which are not now consolidated, is cumbersome

# IMPLICATIONS OF THE NEW TRANSPARENCY

## Will Transparency Change Practices?

*More likely Yes: why trust if you can verify?*

- Academic Medical Center use
- Professional Medical Associations use
- Journal use
- Student use
- Government use
- Media use
- Educated consumer use

# IMPLICATIONS OF THE NEW TRANSPARENCY

## A possible emergence of a two-track system:

- The **Entrepreneur** for whom transparency provides public recognition of financial success.
- The **Professional** who accepts no personal industry funding, so as to pursue leadership positions within the profession.