



February 25, 2010

Senator Grassley Probes Ties Between WebMD and Industry

Inquiry requests accounting of funding by pharmaceutical companies, medical device companies, and the insurance industry

Senator Grassley, ranking Republican on the U.S. Senate Committee on Finance (Finance Committee), is investigating the relationship between WebMD Health Corporation (WebMD) and industry. Although the inquiry began after Senator Grassley learned about a television advertisement by WebMD for an industry-sponsored depression-screening test, the scope of Senator Grassley's request extends to all industry funding provided to WebMD by pharmaceutical companies, medical device companies, foundations established by these companies, or the insurance industry. The inquiry requests an accounting of any transfer of value to WebMD, including but not limited to grants, donations, and sponsorship for meetings or programs, from January 2008 to the present. While the current inquiry has been limited to a small number of recipients, the inquiry may expand to include requests to additional companies.

This investigation is one of a series of inquiries that Senator Grassley and the Finance Committee have made into various aspects of the pharmaceutical and medical device industries, including consulting arrangements and industry funding for Continuing Medical Education (CME). Each of these inquiries encompasses a wide variety of activities over an extended period of time, prior to January 2009. Thus, the information derived from these requests extends to time periods prior to the implementation of the revised PhRMA and AdvaMed Codes and may not be reflective of current industry practices.

In light of Senator Grassley's recent inquiry, and in anticipation of potential future inquiries, manufacturers may wish to review current relationships with WebMD and other medical outlets (if any) to evaluate the amount of funding (including grants, donations, and sponsorships) provided, the extent of collaboration with the media source, and whether there have been any changes to corporate practices since implementation of the revised PhRMA and AdvaMed Codes. While Senator Grassley's inquiry does not expressly allege any illegal activities, it is apparent that there are concerns in Congress of undue

For more information, contact:

Edward M. Basile
+1 (202) 626 2903
ebasile@kslaw.com

Seth H. Lundy
+1 (202) 626 2924
slundy@kslaw.com

Daniel F. Donovan III
+1 (202) 661 7815
ddonovan@kslaw.com

Deborah Tolomeo
+1 (650) 590 0733
dtolomeo@kslaw.com

**King & Spalding
Washington, DC**
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Washington, DC 20006-4706
Tel: +1 (202) 737 0500
Fax: +1 (202) 626 3737

Silicon Valley, CA
King & Spalding LLP
333 Twin Dolphin Drive
Redwood Shores, CA 94065
Tel: +1 (650) 590 0700
Fax: +1 (650) 590 1900

www.kslaw.com



industry influence and/or promotion being incorporated into what the public may perceive as independent and objective educational sites and information.

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Specifically, on February 18, 2010, Senator Grassley sent an inquiry to the President and CEO of WebMD Health Corporation requesting information regarding an industry-sponsored depression-screening test called “WebMD Depression Health Check.”¹ Although the screening test discloses the industry sponsor and identifies that “The content is selected and controlled by WebMD’s editorial staff,”² Grassley expresses “concern” about WebMD acting as an independent and objective resource in light of such industry relationships.

The inquiry requests the following types of information:

- Copies of all communications regarding the creation of the WebMD depression screening test;
- Copies of all contracts regarding the creation of the WebMD depression screening test;
- Communications between WebMD and pharmaceutical companies regarding the creation of the WebMD depression screening test;
- Details about WebMD’s policies on disclosure of outside income by top executives, board of directors and physicians;
- Disclosures of outside income filed with WebMD by top executives, board of directors and physicians;
- A complete accounting of industry funding provided to WebMD Health Corporation by pharmaceutical companies, medical device companies, foundations established by these companies, or the insurance industry.

As set forth in the request, the term “industry funding” is broadly defined to refer to any transfer of value, including but not limited to grants, donations, and sponsorship for meetings or programs, for the time period from January 2008 to the present. Because reporting practices may vary between organizations, Senator Grassley requested that WebMD prepare a chart detailing annual amounts of industry funding per year, including the following information: 1) year; 2) name of company; 3) amount of funding; and 4) reason(s) that the funding was provided. Finance Committee inquiries requesting similar information have resulted in the disclosure of such non-public information provided to the Committee.³

¹ <http://freepdfhosting.com/627bb81d87.pdf>

² <http://www.webmd.com/depression/depression-health-check/default.htm>

³ <http://finance.senate.gov/press/Gpress/2008/prg041108z.pdf>



FDA Partnership with WebMD, LLC. Industry is not the only organization to sponsor information on WebMD.com. On December 3, 2008, FDA announced a partnership with WebMD, LLC to “extend the reach of FDA Consumer Health Information and to provide consumers with better information and timely content concerning public health and safety topics, including alerts of emerging safety issues and product recalls.”⁴ FDA’s partnership with WebMD, LLC is FDA’s first relationship with a private for-profit media outlet. At the time the partnership was announced, members of the media raised concerns that the partnership may be perceived as an “obvious endorsement of the FDA for WebMD as a go to source for people to answer health and medical questions.”⁵ FDA responded that the relationship should not be construed as an endorsement; rather, it should be construed as WebMD providing “an opportunity for people who are accessing the WebMD Web site to get information directly from the Food & Drug Administration.”⁶

Although FDA continues to expand its relationship with WebMD,⁷ the current inquiry by Senator Grassley could pose a potential threat to such initiatives if the independence and objectivity of such media sites is called into question.

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King & Spalding continually monitors congressional oversight activities. Please contact us with any questions or if we can assist with targeted analysis of this inquiry or other congressional inquiries of consequence to the life sciences industry.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.

⁴ 73 Fed. Reg. 73941 (December 4, 2008).

⁵ <http://www.fda.gov/downloads/NewsEvents/Newsroom/MediaTranscripts/UCM169315.pdf>

⁶ *Id.*

⁷ 74 Fed Reg. 57315 (November 5, 2009).