

Industry Practices Review Committee (IPRC) Decision
April 2, 2015 Meeting*

Company X v. Company Y

Allegation: That Company Y induced a group purchasing organization's members' physicians by providing inappropriate incentives as part of signing a purchasing agreement in contravention of guiding principle #8 and section 12.2.4. Alternatively, if the grant is found to be a patient program, it is a violation of section 14.2.2.2.

Decision: *No Infraction.* The majority of the IPRC panel agreed that the complaint should be dismissed.

Procedural Issue. Company Y argued that the complaint was procedurally flawed for failing to meet a threshold of reliability and for being based entirely on second hand information. There was consensus amongst the IPRC members that the alleged procedural issue would not in and of itself be enough to dismiss the complaint since complainants may not always have documentary or witness evidence for a complaint and because IPRC cannot compel the production of additional evidence from member companies. Therefore a complaint should be heard unless it was made in bad faith, or is frivolous or vexatious, which was not found to be the case in this instance.

Substantive Issues. In the alternative, Company Y argued that the complaint had no substantive merit, because: (a) while termed a "grant", the payments were in fact non-discretionary contractually-based volume purchase rebates paid to the hospital at large; (b) the rebate provided an appropriate level of institutional separation so as not to influence individual HCP prescribing practices at the group purchasing organization's member institutions; and (c) the Code should not be interpreted to restrict legitimate incentives negotiated by suppliers with institutional stakeholders or their agents. Company Y also argued that the use of rebates is a widespread and accepted commercial incentive in Canadian healthcare procurement.

The majority of the panel (three members) dismissed the complaint on the basis that there was no nexus between the rebate being paid to the hospital at large and influence on the prescribing practices of individual HCPs at the institution.

Dissent: One panel member concluded that the Code had been violated because volume-purchase rebates impact the availability of competing medications in those institutions. Therefore, the rebate had the indirect effect of influencing prescribing behavior in the institutions represented by the group purchasing organization.

Recommendation to Ethics Committee: Some members of the panel were concerned that a broad reading of section 12.2.4 could infringe on legitimate commercial practices and have wide ranging

implications. As a result, it is recommended that the Ethics Committee consider the potential impact of certain sections on industry commercial practices.

* The complaint was heard by a panel of four. One IPRC member recused from hearing the complaint because of the potential perception of a conflict of interest.