

# IN THE CROSS HAIRS



Ophthalmology-related whistleblower lawsuits covered by the lay press draw national attention to our practices, the business of medicine, and how we physicians interact with industry. In one such case this year, Allergan paid \$13 million to settle a whistleblower lawsuit brought by two ophthalmologists, Herbert J. Nevyas, MD, and Anita Nevyas-Wallace, MD; the federal

government; and 19 states. Under federal law, Drs. Nevyas and Nevyas-Wallace may receive up to 30% of the settlement amount. Brought under the federal False Claims Act and various state statutes, the suit alleged that Allergan “offered services ranging from practice-group management advice, human-resources assistance, and continuing education in a kickback scheme aimed at stimulating sales of eye-care drugs Restasis and Acular LS, among others.”<sup>1</sup>

I clearly remember the Allergan Access website identified in the complaint, but my perception of it differed greatly from that of the two doctors involved in the suit. The website consisted of a staff education portal, access to boilerplate consent and employment contracts, and a host of other business- and billing-related services. The services were offered for an annual fee. Although I felt that the offering was novel, valuable, and beneficial, I never felt induced, pressured, or incentivized to use Allergan’s products. My practice had already been using Allergan’s products for our patients along with those of many other companies, and we have always decided which products to use based on what we feel is best for our patients. As a physician who interacts closely with industry, I have almost always encountered ethical people who only want to support me in rendering the best care I can.

Drug and device companies have a long-standing history of providing promotional products branding their medications,

something that I find to be pointless and to offer me little help in delivering better care to my patients. Pens, paperweights, lunches, dinners, mugs—none of these improves care. In contrast, the Allergan Access website offered a service—for a fee—to help my practice run better and save me time so that I could focus more on patients. It is ironic that something for which I paid, and which was helpful to my patients and me, could serve as the basis for a claim that we physicians were induced to purchase Allergan’s products.

Unfortunately, the net result of lawsuits such as I have described is that pharmaceutical and medical device companies will hire more attorneys and fewer PhDs and that the industry will focus less on developing new products to help us and our patients. Taken together with The Physician Payments Sunshine Act, US policy trends toward distrust of the medical field and curtails our freedom to interact with industry—a partnership that fuels innovation in and the advancement of health care. I have witnessed firsthand how intense medicolegal scrutiny scales back doctors’ freedom to collaborate with and educate peers. Further limitations are possible, not only on industry but also on our individual practices. Big data and information from electronic health records reported to Medicare could certainly be used to evaluate our practice patterns and spur attempts to control and corral our practice and prescribing patterns.

I can only hope that we ophthalmologists will stay true to our mission of delivering the best care to our patients and use our collective voice to protect our right to practice medicine as we choose. We cannot do this without partnering with industry, so it is vital to protect our relationships with pharmaceutical and device companies. We all need to draw attention to negative trends in health care by contacting our legislators and helping them understand why their continued regulatory efforts do not benefit our patients and the people of this country. ■

**Robert J. Weinstock, MD**  
Chief Medical Editor

1. Mondics C. Allergan settles whistle-blower lawsuit filed by two area doctors. *The Philadelphia Inquirer*. <http://bit.ly/2wfgvby>. Updated June 30, 2017. Accessed September 25, 2017.