

Large or Small, a Gift Is a Gift Is a Gift

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What a strange article Dana Katz, Arthur L. Caplan, and Jon F. Merz (2003) have fashioned. They identify a serious and significant problem: the conflict of interest inherent in the pharmaceutical industry's practice of gift-giving to physicians. They marshal strong evidence that the current practice of dividing gifts into "large" and "small" (with *small* defined as having a value of less than \$100) makes little difference because even gifts of negligible value can and do influence behavior.

What more than the corruption of physician judgment concerning the best interests of the patient does it take to regulate physician behavior? Does it take, as it did with Jesse Gelsinger, the death of the patient to understand that physicians' financial conflicts of interests can prove detrimental to their patient's well-being?

Moral theologians have long held two maximums as true: "Unum crustum non noceat" and "De minimis non curat lex."

A little bit of crust does not break one's fast, and the law is not concerned about minor or trivial matters. That has been and continues to be good teaching. However, what Katz, Caplan, and Merz have established—well beyond the self-serving denial of physicians that they, unlike mere mortals, are not swayed or influenced by token gifts—is that we are all social beings who upon receipt of a gift have "a sense of indebtedness." And as the social science evidence indicates, "Feelings of obligation are not related to the size of the gift or favor."

That society recognizes this reality is seen in the absolute prohibition of journalists, university professors, judges, referees and Major League Baseball umpires accepting gifts "of any size or for any occasion" from anyone

with an interest in the outcome of their judgments. In a bizarre turn of phrase Katz, Caplan, and Merz conclude from this practice that "Similarly, medical professionals ought to step up to the plate . . . in a way that minimizes the intrusion of avoidable conflicting interests."

Medical professionals should not seek "to minimize" but "to avoid" stepping up to the plate altogether. The pizza, pens, and paraphernalia are not necessary for information, education, or benefit to their patients. But they do have a corrupting influence on physician judgment.

Physicians and other medical professionals ought to be free to "belly up to the bar" as much as anyone. But, as is true of judges and referees, they should do so on their own time and on their own dime.

The \$12 million reported by the U.S. Department of Health and Human Services Office of the Inspector General to have been budgeted in 2002 by the pharmaceutical industry for gifts and payments to physicians is not a trivial sum, nor is it trinkets the industry is providing. The purchase of physicians' behavior with the dispensing of gifts is not *de minimis*. Nor ought the behavior continue to be thought of as such.

The motto of physicians who are approached with a few pieces of wampum ought to be, in the words of an old Irish folk song, "It is No, Nay, Never, No, Nay, Never, No more." ■

References

Katz, D., A. L. Caplan, and J. F. Merz. 2003. All gifts large and small: Toward an understanding of the ethics of pharmaceutical industry gift-giving. *The American Journal of Bioethics* 3(3):39–46.