

16 Oct 99

American Medical Association (AMA)
AMA President
Thomas R. Reardon, MD
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Dear Dr. Reardon,

I would like to bring to your attention what I believe is an egregious example of a medical doctor violating the tenets of the AMA Ethics Council guidelines. The guidelines I am referring to involve doctors selling vitamins and other health-related, nonprescription products from their offices for profit. As stated in AMA's Medical News June 7, 1999 article, *Ethics Council Revisits Office-based Product Sales*,¹ this practice "presents a financial conflict of interest, threatens to erode patient trust and jeopardizes the doctor's primary obligation to put the patient's interests ahead of their own."

I believe that my wife, Tawnya Cummiskey, has been victimized by her doctor, Marc D. Braunstein, D.O., 24531 Pacific Park Drive, Suite 103, Laguna Hills, California 92656. Tawnya has been a patient of Dr. Braunstein for approximately 24 months. Approximately five months after she began seeing him, Dr. Braunstein recommended she purchase some products from the Wellness International Network (WIN)²--a self-described "multilevel marketing" firm that specializes in the distribution of weight management, skin-care and nutritional supplements. According to Robert Todd Carroll, "multilevel marketing is a system of marketing which puts more emphasis upon the recruiting of distributors than on the selling of products."³

After presenting his sales pitch in his office, Dr. Braunstein persuaded Tawnya to buy more than \$100 of his prescribed "Chinese herbal nutritional supplements." He assured her that these supplements would result in weight loss, improved energy, enhanced mental acuity, and many other broad claims. However, Gary L. Huber, MD, the American Nutraceutical Association's Vice President for Scientific Communications, believes that many of the types of nutritional supplements sold by companies like WIN are unreliable or even dangerous.

According to Dr. Huber, "almost half of the supplements. . . [are]. . . potentially toxic and that an incredibly high number of them, when combined with prescription drugs, showed they had the potential for adverse drug reactions." Dr. Huber believes it's one thing for physicians to discuss the benefits of supplements with their patients and it's another thing to sell them to patients for a profit.⁴ Dr. Braunstein's behavior appears to be a clear violation of the AMA guidelines that doctors must ensure "that any claims. . . [made]. . . about the product are scientifically valid and are backed up by peer-reviewed literature and other unbiased scientific sources."

After she was induced by Dr. Braunstein to make her initial purchase, Tawnya was surprised to receive a new salesman's kit in the mail informing her she was now an official distributor for the WIN product line. When she initially agreed to buy the supplements, she was unaware that she could only purchase these supplements by becoming a sales representative for the company. Dr. Braunstein never made it clear to Tawnya that what she was actually buying with her first order of supplements was her distributor status as a WIN company representative.

Tawnya eventually decided not to continue buying any additional products from WIN. Not only were the supplements very expensive, Tawnya felt misled by Dr. Braunstein in regards to his misrepresentation of the relationship she would have to maintain with WIN to purchase their products. Moreover, Dr.

¹ "Ethics Council Revisits Office-based Product Sales;" American Medical News American Medical News. June 7, 1999. Available at http://www.ama-assn.org/sci-pubs/amnews/pick_99/anna0607.htm

² "Wellness International Network, Ltd. Corporate Home Page;" Available at <http://www.winltd.com/>

³ Available at <http://dcn.davis.ca.us/~btcarrol/skeptic/mlm.html>

⁴ Available at http://www.ama-assn.org/sci-pubs/amnews/pick_99/anna0607.htm

Braunstein told Tawnya that WIN was the only source for the kinds of supplements he was prescribing for her. This behavior appears to be yet another clear violation of the AMA guidelines mandating that doctors must "avoid monopolistic arrangements that hold patients captive" by ensuring that the products are made "available through other channels, such as pharmacies, so that patients have a choice."

Eventually, Tawnya made it clear to the doctor that she was "not interested in serving as a WIN distributor nor buying any additional vitamins." Dr. Braunstein responded with an aggressive marketing campaign by sending dozens of emails, making personal calls to her home and office, and continuing his personal entreaties during her office visits. He continually pressured her to resume buying vitamins as a WIN distributor and also to actively begin recruiting her friends and family to join the WIN network. On several occasions, he recommended that she attend a local WIN seminar to further draw her into his multilevel marketing web.

Throughout all of this, Dr. Braunstein did make it abundantly clear that he was profiting personally from Tawnya joining WIN and purchasing more vitamins. Indeed, this was his major selling point for Tawnya to entice her friends to become WIN distributors. However, according to the California Medical Association handbook, physicians should stay away from ventures that pay them for each patient who purchases their products. Under both state and federal fraud and abuse law, the activity would be viewed as an illegal kickback.⁵

After Tawnya reiterated her disinterest to Dr. Braunstein, he continued with an even more aggressive and abusive program of disinformation to induce my wife to change her mind. Sensing that I was the source of Tawnya's reluctance to participate further, Dr. Braunstein encouraged Tawnya to "bring hubby. . . [to the meetings]. . . since he is sure I am doing Avon." He constantly alluded to the growing wealth of his fellow WIN distributors and encouraged Tawnya to reconsider her decision.

As Tawnya continued to refuse, Dr. Braunstein's email took on a thoroughly unprofessional and even threatening tone. The doctor attempted to dismiss Tawnya's reluctance by claiming she and I were making our decision "out of fear and assumptions." Braunstein harassed Tawnya with increasingly inappropriate email comments such as "does hubby always make decisions without information?" When my wife commented that she found his comments upsetting and asked him to "keep this on a professional level vice a personal one," Dr. Braunstein's curt reply was "The truth can be painful."

Yes, the truth can be painful. The truth is that Dr. Braunstein appears to be a manipulative, unprofessional and completely self-serving physician who has placed his own financial interests above that of the patients he serves. He has violated virtually every tenet of the AMA guidelines in respect to selling unproven, nonprescription products in his professional capacity as a medical physician.

Clearly, this is a serious issue. As Kathleen Weaver, MD, AMA delegate from Portland, Oregon, claimed, the medical profession is "in danger of going down the drain, one vitamin bottle at a time."⁶ Alexander M. Capron, an ethicist who teaches at the University of Southern California School of Law, states that "I'm assuming there is still a core of the medical profession who believes that what is being sold here is not a health-related product but the profession's heritage."⁷

It has become completely evident to both my wife and myself that Dr. Braunstein is more concerned about lining his pockets than with my wife's health. Needless to say, we have terminated our relationship with Dr. Braunstein, but who knows how many other victims the doctor is lining up to exploit? Indeed, Dr. Braunstein continues to shamelessly pander these products directly on his Internet web site.⁸ I strongly encourage a formal investigation of Dr. Braunstein's sideline business and his continued fitness as a licensed physician. At a minimum, I believe formal AMA censure for the doctor would be appropriate.

⁵ Available at http://www.ama-assn.org/sci-pubs/amnews/pick_99/anna0607.htm

⁶ Available at http://www.ama-assn.org/sci-pubs/amnews/pick_99/anna0607.htm

⁷ Available at http://www.ama-assn.org/sci-pubs/amnews/pick_99/anna0607.htm

⁸ Dr. Marc Braunstein's Web Site; Available at <http://members.home.com/drmarc/> ; WIN product information is available at <http://members.home.com/drmarc/productintro.html>

According to the AMA's *Principles of Medical Ethics*, "a physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception."⁹ Moreover, as Robert L. FitzPatrick and Joyce K. Reynolds write, "the time has come to question and challenge the legal basis of the multi-level marketing (MLM) industry. If we do not morally and legislatively address MLM now, we are in danger of institutionalizing pyramid schemes as legitimate free market operations."¹⁰

Having our nations' medical doctors involved in such outrageous chicanery such as Braunstein's multilevel marketing is detrimental to the entire medical profession. Although it may not be strictly illegal, the perception of suspicious business practices may destroy the faith that patients have in their doctors. Dr. Gregory Rokosz, the President of the State Board of Medical Examiners, believes that "the doctor-patient relationship is a special relationship based on trust. Patients trust physicians to do what's in their best interest, to put that above the doctor's own personal or financial interests. This special relationship should not be exploited for commercial reasons."¹¹

Moreover, selling medically unproven products such as the homeopathic medicines sold by WIN within doctors' offices further erodes the public trust in our physicians. It is simply wrong and unethical to violate a patient's professional trust. Dr. Rakatansky, Chairman of the AMA Ethics Council, states that the AMA's new guidelines essentially prohibit doctors' involvement in multilevel marketing. "It's taking advantage of a vulnerable population," he explains. "As a patient you have a right to expect your doctor to do what's best for you, not what's best for the doctor. There are lines one shouldn't cross in medicine, and this is one."¹²

Dr. Braunstein has crossed that line with my wife, and he needs to pay for it. I strongly encourage you to validate my claims via a thorough investigation and expeditiously work to prevent Dr. Braunstein from victimizing other patients with his misleading and reprehensible multilevel marketing schemes.

Sincerely,

James Cummiskey

⁹ "The Principles of Medical Ethics;" American Medical Association (AMA) Web Site; Available at <http://www.ama-assn.org/ethic/pome.htm>

¹⁰ "False Profits, Seeking Financial and Spiritual Deliverance in Multi-Level Marketing and Pyramid Schemes;" FitzPatrick Reynolds; 1997 Available at <http://www.falseprofits.com/FSLegalityPg.html>

¹¹ "ARE DOCTORS ' SIDE DEALS PRESCRIPTION FOR TROUBLE? SOME SEE POTENTIAL FOR CONFLICTS OF INTEREST;" LINDY WASHBURN; 08/22/1999; The Record, Northern New Jersey

¹² "The Doctor Will Sell You Now;" New Times Magazine; Palm Beach, FL; 28 Jul 99; By Harris Meyer; Available at <http://www.newtimesbpb.com/issues/1999-07-29/feature.html>