WORKSHOP on INDEPENDENCE and SCIENTIFIC DECISION-MAKING PROCESS

Murray M. Lumpkin, M.D., M.Sc.
Commissioner's Senior Advisor
and Representative for Global Issues
Immediate Office of the Commissioner
U.S. Food and Drug Administration
Brussels, Belgium
12 October 2011

Public Service – full or part time

- Is a public trust
- Is something in which the public must have confidence that:
  - Those involved are working for the good of the public
  - Those involved are not being influenced by other incentives, especially potential personal gain or scientific or policy bias
  - There are no real or perceived conflicts of interest
- The process is transparent, open, available for inspection by others in the public
  - Information/openness breeds confidence/trust; silence/opacity breeds fear/distrust.

Public Service

- Generally non-problematic when there are no differences of opinion
- Generally non-problematic when the science is clear and unambiguous
- Often, though, such is simply not the case
  - Science is not clear cut; or still nascent
  - Reasonable people can see the science differently
  - Question is not one answered by science

Public Service

- How does one establish transparent practices that help engender trust and confidence in the advice regulatory agencies receive and the decisions a regulatory agency must make for the larger community?
- How does one define, seek out, and deal with real and perceived interests that are in conflict with the public health interest of the agency?

Handling Conflicts of Interest

- **Trust / Confidence:**
  - **Define what are conflicts of interest – financial, scientific biases, others**
  - **Define acceptability/limits of real conflicts**
  - **Define unacceptable "perceptions"**
  - **Need for expertise / yet conflicts exist / especially with cutting edge science issues when the pool of experts is very small**

- **Transparency**
  - **How / when are conflicts made public**
  - **How to handle competing positive community values of transparency, individual privacy, and business confidentiality**

Public Service

- Decision-Makers
- Advisors to the Decision-Makers
- Both are public servants
  - Trust, confidence, transparency
  - What they do though is different

U.S. FDA

- **Decision-makers (by law/regulation):**
  - **Senior executive scientists within the various organisational components of the US FDA**

- **Advisors and Consultants (by law/regulation):**
  - **Renowned scientists and others from outside the US FDA with whom we engage, usually in public advisory committees, to provide us advice and to inform our decision-making processes**

Handling Conflicts of Interest

- **US Government-wide**
  - **Federal Standards of Conduct**
  - **Regulatory Prohibitions**

- **FDA Specific Requirements as a regulatory agency**
  - **Info used easily for personal financial gain**
  - **Decisions have significant public health and economic impacts**

Conflicts of Interest – U.S. Law

- **U.S. law prohibits all employees (including Special Government Employees (aka "advisors and consultants") from participating in any particular Government matter that will have a direct or predictable effect on their financial interests.**
- **It also prohibits employees from acting in Government matters that will affect the financial interests of others with whom they have certain relationships.**

Conflicts of Interest

Includes interests of individual of concern, but also his/her:

- **Spouse/general partner, minor child,**
- **Organization (officer, director, trustee or employee)**
- **Negotiating for future employment**

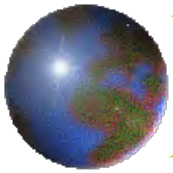
Conflicts of Interest

- Financial interests
- Gifts from outside sources
- Gifts between employees
- Seeking other employment or having post-employment arrangements in place
- Outside activities while a federal employee
- Impartiality –
  - previously expressed opinions on the issue
  - advice not representative of larger community

Scope of "Conflicts of Interest"

- **Financial interests include (but not limited to):**
  - **Stocks and investments**
  - **Primary employment**
  - **Consulting or advising**
  - **Contracts/Grants/Cooperative Research and Development Agreements**
  - **Patents/Royalties/Trademarks**
  - **Serving as Expert Witness**
  - **Teaching/Speaking/Writing**

- **Imputed interests (e.g., interests of employer) as well as personal interests**
  - **Example: academic's employer receives grants from pharmaceutical company**



Decision-Makers

U.S. FDA Employees

- **Prohibited from having a financial interest in or working for a "significantly regulated organisation":**
- **Sales of products regulated by FDA constitute 10% of more of the organisation's gross annual sales or where an organisation does not have a record of sales of FDA regulated products, it will be deemed to be significantly regulated if its operations are predominantly in fields regulated by FDA, or if its research, development, or other business activities are reasonably expected to result in the development of products that are regulated by the UFDA**
- **Doesn't matter what FDA product centre one works in – your interest imputes to ALL FDA regulated products**

U.S. FDA Employees

- Not allowed to work on one's own previous work (lifetime)
- Not allowed to work on any product from a previous employer for specified periods of time (or competitors to product from previous employer)
- Not allowed to work on a product if previous public comments on product
- Not allowed to work on a product/company's products if negotiating for work

U.S. FDA employees

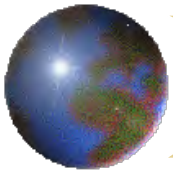
- **Transparency through annual public filings – all available through FOI**
  - **All executive level employees (includes all regulatory final decision makers)**
  - **All reviewers, inspectors**
  - **Certain high level non-administrative positions (procurement and contracting, attorneys)**

U.S. FDA Employees

- List all purchases/sales of shares, bonds, certificates of deposits, all financial instruments (dates/amounts)
- Moneys owed to others (amounts/to whom)
- Gifts, salaries other than from US government
- Property /other items of value purchases/sales
- Post-employment agreements / seeking employment
  - As happens, must inform supervisor of any negotiating
- Outside activities – must have approval for each – paid or unpaid - must have before commencing activity
- Reviewed by agency and department ethics staff: Divestiture or resignation required if conflict determined
- Annual ethics training - required

U.S. FDA Employees

- **Real and perceived conflicts**
- **Waivers / recusals (generally to handle spousal/domestic partner situations or previous/potential future employment)**



FDA Advisors and Consultants

Advisory Committee Composition

- Technical Experts (usually academic or other government agencies)
- Consumer Representatives
- Patient Representatives
- Special Issue Representatives
- Industry Representatives (on some committees – never allowed to vote, COI can't be waived)

Advisory Committee Process

- **Public – closed only in exceptional circumstances (and reasons for closure must be made public and are subject to challenge)**
- **By law, specific time for general public to comment**
- **Voting – public and simultaneous**

Most Advisors and Consultants are "Special Government Employees"

- **Temporary service, not to exceed 130 days in a year**
- **Federal Standards of Conduct apply**
  - **Even if the employee is not paid by the US**
  - **Ethics rules apply on days when they perform no services to the US**

Financial Conflicts of Interest

- **The law prohibits all employees (including SGEs) from participating in any particular Government matter that will have a direct and predictable effect on their financial interests. It also prohibits employees from acting in Government matters that will affect the financial interests of others with whom they have certain relationships.**

18 USC 208

Scope of "Conflict of Interest"

- **Financial interests include, but are not limited to:**
  - **Stocks and investments**
  - **Primary employment**
  - **Consulting or advising**
  - **Contracts/Grants/Cooperative Research and Development Agreements (CRADAs)**
  - **Patents/Royalties/Trademarks**
  - **Serving as Expert Witness**
  - **Teaching/Speaking/Writing**

- **Imputed interests (e.g., interests of employer) as well as personal interests**
  - **Example: academic's employer receives grants from pharmaceutical company**

Advisors and Consultants

- All must be declared when applying to be an advisor or consultant
- If accepted, document becomes public
- Not accepted if COIs above threshholds or if, above, they can't be handled appropriately (waivers)

Automatic Exemptions for SGEs

- **Diversified mutual funds over which they have no control as to specific content**

- **Publicly traded securities**
  - **<US$15 K sponsor (drug approval)**
  - **<US$25 K competitors of sponsor**
  - **<US$25 K one company, <US$50 K aggregate for general party/policy matters**

Consulting for Regulated Industry

- Not allowed to have EVER consulted on the product before the committee
- Not allowed to have consulted for the company whose product is topic of the meeting in the current or previous year
- Any consulting for direct competitor of product examined closely for potential conflict

FDA's Policy Challenge

How to balance need for:

- **Expert advice *and***
- **Public confidence,**

when expertise is limited.

Waivers

- A waiver of the prohibition may be granted by the Commissioner provided
  - the need for the individual's services outweighs the potential for a conflict of interest (special govt. employee)
  - the interest is not so substantial as to be deemed likely to affect the integrity of the employee (regular govt. employee)

Letter from Dr. Hamburg to FDA Staff, April 21, 2010

- Acknowledged challenge of assembling the top experts while maintaining the integrity of FDA's advice and consulting process
- Waivers needed at times to ensure best advice
- Described 3 steps, consistent with existing policy, to consider when recommending a waiver
  - Nature of conflict
  - Type of advice sought by the agency
  - Justify waiver with search for equally expert advisors without conflicts and explain why participation is needed to provide essential expertise

Section 712 of the FDCA

Additional COI requirements for FDA

- **Before appointment, FDA must review an individual's expertise and financial information so as to reduce the likelihood that an appointed individual will later need a waiver.**
- **Annual statutory cap on the number (percentage) of conflict of interest waivers that FDA may grant.**
- **All waivers and relevant financial information must be publicly disclosed.**

Number of COI Waivers Declining

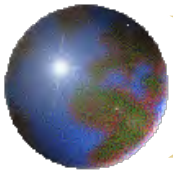
•FY07 actual rate	15.3%
•FY08 statutory cap	14.6%
•FY08 **actual rate**	**6%**
•FY09 statutory cap	13.8%
•FY09 **actual rate**	**2%**
•FY10 statutory cap	13.0%
•FY10 **actual rate**	**1%**
•FY11 statutory cap	12.3%
•FY11 (3rd Quarter) **actual Rate**	**1%**

Waivers

- Cannot be for advising on one's own work
- Can be for either real or perceived conflicts; for financial or other COI
- Can result in participation only; but no voting
- Can result in only answering questions directed at advisor, but not allowing leading the general discussion

Physician Payments Sunshine Act

- Part of recent health care reform
- Pharmaceutical, device, biological, and medical supply companies must record and report any physician "payments or other transfer of value" >US$10 in 2012
  - Amount, date, form, and nature (gift, consulting fee, entertainment, trip, speakers bureau fee, etc)
- Details posted in searchable database starting in 2013
  - Search by company, physician, type of gift, etc
- Some companies already doing
- Catalysing changes at academic institutions



THANK YOU