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Bad Medicine

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Questions Raised of Conflicts At 2 Hospital Buying Groups

This article was reported by ***Walt Bogdanich, Barry Meier*** *and* ***Mary Williams Walsh*** *and was written by Mr. Bogdanich.*

MEDICINE'S MIDDLEMEN

Spending Billions, Strings Attached

Amid a tangle of wires and worried faces, the brief life of Joshua Diaz was slipping away, and Dr. Mitchell R. Goldstein knew he must soon make an agonizing decision.

For 30 minutes, Dr. Goldstein's emergency team had medically assaulted the 2-week-old baby with lifesaving measures, none of which appeared to be working. Worse, a device called a pulse oximeter failed to detect a pulse or show how much oxygen Joshua's blood was ferrying to his vital organs.

"I had the nurse and respiratory therapists asking me, 'Why are we doing this?' " said Dr. Goldstein, of West Covina, Calif. Some feared they were just torturing the baby. But the doctor pressed ahead after attaching a second, experimental monitor that showed encouraging signs: Joshua's blood was taking on more oxygen.

Today, Joshua Diaz is a healthy 7-year-old living in Ontario, Calif. "We probably would have given up," Dr. Goldstein said, were it not for the second monitor.

But seven years later, its inventor, Joe E. Kiani, says he still cannot sell his oximeter, regardless of the price, to many American hospitals, even though medical experts say it helps the most fragile of patients — premature infants.

The reason, Mr. Kiani says, is that he has effectively been locked out — his much larger competitor has secured exclusive contracts to sell its device to thousands of hospitals, in part by paying fees to two national purchasing groups that largely determine which products many hospitals buy.

These two private groups act as middlemen for about half the nation's nonprofit hospitals, negotiating contracts last year for some $34 billion in supplies, from pharmaceuticals to pacemakers, bandages to beds.

Each group has the same basic mission: to use the market power of its more than 1,500 hospitals to find the best medical products at the lowest prices.

But many in the medical world — Mr. Kiani among them — question whether that mission is being compromised by financial ties that the groups, Premier and Novation, have to medical supply companies, ties that, according to an investigation by The New York Times, are both extensive and highly unusual.

The problem begins with this simple fact: The buying groups are financed not by the hospitals that buy products but by the companies that sell them. In other words, the groups take money from the very companies they are supposed to evaluate objectively. Each year, companies pay Premier and Novation hundreds of

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Stephanie Diani for The New York Times

Although Dr. Mitchell Goldstein says an experimental device helped save a child, the product's maker says it has effectively been blocked from selling to many hospitals.

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millions of dollars in fees that represent a percentage of hospital purchases. The more hospitals spend on medical supplies, the more dollars Premier and Novation get from the suppliers.

In a few cases, Premier or some of its officials have also received stock or options from companies with which Premier contracts.

Critics say such conflicts of interest can mean that the buying groups do not always choose the products that are best for patients, hospitals or the taxpayers and insurers that pay their bills.

''It's just like payola,'' said Paul Lombardi, head of contracts for the Swedish Medical Center in Seattle. Buying groups are ''getting paid'' to buy certain products, said Mr. Lombardi, whose hospital system dropped Premier in 1996.

In Mr. Kiani's case, his small company says it could not compete against an industry giant, Mallinckrodt, whose many products generate large fees for the buying groups. Nor, Mr. Kiani says, can he afford to do what that company did — help finance Premier's private venture-capital fund and contribute $1 million to a Premier research service.

Premier did not give Mr. Kiani's company a contract even though the buying group's own evaluators had privately concluded in 1999 that its oximeter was superior to what was then on contract. Premier says that review was not conclusive.

R. David Nelson, who leads the Institute for Supply Management, representing purchasing managers or buyers from 11,000 companies, said he was surprised to learn that buying groups were financed by suppliers.

''I had no idea that the kind of things you're talking about were going on,'' Mr. Nelson said. If such practices occurred in the industries he knows, ''red flags would go up all over the place,'' he added.

When suppliers finance buying groups ''you get the tail wagging the dog,'' Mr. Nelson said.

Premier and Novation, which say their contracting decisions are untainted by supplier payments, release no public accounting of how much each supplier pays them, or the terms of individual contracts.

''Billions of dollars are being controlled by two companies, and nobody knows who they are,'' said Larry R. Holden, president of the Medical Device Manufacturers Association, a Washington-based group of mostly small companies. ''Nobody looks at their books. Nobody knows what companies they are investing in.''

The big buying groups ''are like a form of government,'' said Peter Vincer of the Technology Management Group, an equipment maintenance company in Oak Creek, Wis. ''They say who can play and what it costs to play.''

An Industry Is Transformed

Buying groups became popular more than two decades ago as a way for hospitals to seek better prices for goods and services, which account for about a quarter of their costs. The groups identify good products and negotiate contracts for them, but member hospitals do the actual buying.

Initially, there were no dominant buying groups, and hospitals, not suppliers, often financed them. Much has changed, however. Not only did the groups consolidate, but in 1986 they also convinced Congress that money could be saved if legislators allowed suppliers to pay their costs.

As a result, Congress exempted the groups from federal antikickback laws. The agency now called the Centers for Medicare and Medicaid Services was supposed to monitor the fee payments ''for possible abuse, particularly those in excess of 3 percent'' of sales, according to a Congressional committee report.

Novation and Premier may have gone well beyond what legislators envisioned.

Novation acknowledges that about 30 percent of its contracts exceed 3 percent of sales, and a hospital official who buys through that group complains that some fees are now ''up in the teens.'' Novation said its hospitals approved those fees.

Premier accepts virtually no fees above 3 percent, but it has sometimes accepted stock in supplier companies in lieu of or in addition to cash payments. It has also invested in a number of companies in the medical supply field.

Just three months ago, American Pharmaceutical Partners, based in Los Angeles — a company that Premier helped start and steered hospital business to — went public. At that time, the buying group's stake was worth $46 million. Premier said it invested in suppliers to encourage competition, to promote new technology and to make money for its hospital shareholders.

Some of Novation's hospitals are angry that tens of millions of dollars of supplier fees were invested in a publicly traded, money-losing electronic commerce company, Neoforma Inc.

Several hospital officials contend that Premier and Novation have become preoccupied with increasing revenue, rather than negotiating the best deals on products. Instead of being returned to hospitals, some of that revenue goes to finance programs that have little to do with negotiating buying contracts.

Some top buying group executives have found other ways to profit personally. Richard A. Norling, Premier's chairman and chief executive, was allowed to retain and continue collecting a supplier's stock options that he converted into a $4 million profit in 2001.

Mr. Norling received those options while serving as a director of one of Premier's predecessor buying groups and as Premier's top official.

Mr. Norling said he recused himself from any buying group decisions involving the company, Express Scripts, that gave him the options as one of its directors.

Premier officials say they did not know until an inquiry by The Times that another of its executives, William J. Nydam, received stock options as a director of a Premier contractor, American Pharmaceutical Partners. The options were worth about $1.2 million when the company went public late last year. Mr. Nydam has since left Premier.

Nor did the buying group know — until The Times asked — that another official, Palmer Ford, had received options from the same contractor after he left Premier, the group said. Neither man agreed to be inter-

viewed.

Not every company has opened its doors to Premier. Michael Dalton, the head of Norfolk Medical of Skokie, Ill., said an executive of his small medical device company told him that around 1996 he was approached by a Premier official who suggested that Norfolk could "move to the head of the line" in the contracting process if it allowed the buying group to invest. Premier said it knew of no such comment.

Mr. Dalton said he had rejected the suggestion, but another company in the same field did give Premier securities. In 1998 that company, Horizon Medical Products of Manchester, Ga., issued Premier a warrant for up to 500,000 shares of its stock "in partial compensation" for Premier's business, records show. A top Premier contracting executive also got stock options as a member of Horizon's board.

Premier and Novation say they use member hospitals to help them select products based on quality and cost, and not on other financial considerations. "We use a competitive bid process," said Novation's president, Mark McKenna. Novation said that in 1998 it began de-emphasizing the role of fees in awarding contracts.

Mr. Norling, Premier's chief executive, said his members "would not use our services" if they thought fees and stock, rather than cost and quality, determined who got contracts.

Supplier fees finance not just the cost of negotiating contracts, but also other programs, including ones to improve medical care.

Some of the unused money goes back to the hospitals that own the buying groups in annual disbursements, though some members complain that not enough is returned. Other hospitals that buy through the groups but do not have an ownership stake get no cash back.

Praise From Some Hospitals

Maurice W. Elliott, a former chief executive of Methodist Healthcare in Memphis, said Premier saved his organization money, provided a "database to encourage quality" and helped him find minority contractors.

Novation is also highly praised by many of the hospitals that use it.

The two major buying groups say they are accountable only to those hospitals that own them.

At Premier, which is based in San Diego, the owners include more than 200 hospital systems, among them prominent New York institutions like Mount Sinai Hospital and North Shore-Long Island Jewish.

Novation, based in Irving, Tex., negotiates contracts on behalf of its two owners — VHA Inc., a group of mostly community hospitals, and the much smaller University HealthSystem Consortium, representing many academic hospitals. Supplier fees go to VHA and the consortium, which use them to finance various programs.

"We answer the membership on every given day," Mr. McKenna of Novation said.

But the answers do not satisfy everyone. Larry Dickson oversees purchasing through Novation for Providence Health System in Seattle. He says he cannot get specific information on fees, despite the critical role he plays in supplying his hospitals.

"Why is this so secret?" Mr. Dickson asked. "There is an accountability question that is very much concerning a lot of people in health care. And if you ask, and the response you get is, 'That's none of your business,' that raises more questions than it answers."

An Inventor's Frustration

Joe E. Kiani, an Iranian immigrant, was a 24-year-old electrical engineer in 1989 when he helped found a company called Masimo in a garage in Mission Viejo, Calif. Using $175,000 in loans and a second mortgage, he set out to solve a problem that had long eluded the makers of pulse oximeters: how to eliminate false readings caused by sudden patient movement.

A pulse oximeter, which is clipped to a finger or toe, measures blood oxygen levels. It works best when patients are lying still, as during surgery. But the jerky movement of an infant or trauma patient can skew the readings. Nor did monitors work well in newborns, who have low blood flow in their hands and feet.

When readings fall outside normal limits, either because of a sudden patient movement or a true emergency, an alarm sounds. With a false alarm, nurses may unwittingly give babies too much oxygen, heightening the risk of eye damage in premature infants, experts say.

Moreover, when there are too many false alarms, as is often the case in neonatal units, hospital workers may become immune to the real ones. In such cases, brain damage can occur.

By the mid-1990's, Mr. Kiani was convinced his new oximeter had solved those critical problems. And over time, many in the medical field would agree with him. Several hospitals that compared Masimo's device to conventional oximeters concluded that Masimo's was better.

"If it was my baby or my daughter's baby, absolutely I would have Masimo on it," said Joseph Nigl, a respiratory therapist at Covenant Health Care in Saginaw, Mich.

The Cedars-Sinai Medical Center in Los Angeles found Masimo's device played a critical role in helping to virtually eliminate certain infant eye damage, said Dr. Augusto Sola, formerly head of the neonatology unit.

Even Masimo's chief competitor, Nellcor, said that the device was "very good" and that it had "raised the performance bar," according to what Masimo said were internal Nellcor documents filed as part of a patent dispute. Nellcor, a unit of Mallinckrodt, said those statements were taken out of context.

Nellcor's device is highly regarded, but some clinicians said it was ripe for a challenge in the late 1990's.

Dr. Goldstein, who saved Joshua Diaz, says Masimo's product was a significant advance. Masimo paid the cost of his traveling to present his research.

For all the benefits of Mr. Kiani's oximeter, many hospitals would not buy it. And some would not even allow his sales staff to demonstrate how it worked. A reason: Masimo did not have a contract with Premier or Novation. Both had awarded "sole source" contracts to Nellcor, which meant that hospitals were given strong financial incentives to buy Nellcor oximeters.

Mr. Kiani said he had not known that manufacturers were expected to supply the money that finances the big hospital buying groups. "I didn't think this kind of system

existed,'' he said.

It was a system that the big buying groups had creatively nurtured. Premier, for example, invited suppliers to attend a 2000 conference with this written offer: for $25,000, a company could buy not only advertising at the conference, but also a ''private dinner'' with two Premier vice presidents, and a ''small group meeting'' with hospitals. Premier has said money does not help any company get a contract.

One invitation went to Retractable Technologies, a small maker of safety syringes in Little Elm, Tex. The company's chief executive, Thomas J. Shaw, says the dinner offer sounded to him like a bribe. ''The initial $25,000 is just for the appetizer,'' Mr. Shaw said. ''The entree is in the millions.''

Retractable has sued Premier and Novation in Texas, accusing them of restraining trade — a charge both groups deny.

The entree Mr. Shaw referred to is what suppliers pay to sell their products through the big buying groups. The payments take different forms. Some include stock or options in the supplier, or have clauses where the fee percentage rises in proportion to sales. And buying groups often collect twice on the same product — from the manufacturer and from the company that delivers the product to hospitals.

Suppliers have also sweetened contracts by agreeing to pay some fees before sales are made. The inspector general of the Centers for Medicare and Medicaid Services issued a legal advisory in 2000 stating that payments of that type could pose ''a significant risk of fraud and abuse.''

Both groups say they have stopped taking such payments, and they declined to identify the companies that made them, or the size of the payments.

Mr. Kiani's company had limited ability to pay fees because, like other small firms, it had a single product line. Nellcor had no such problem, because its corporate parent, Mallinckrodt, sold many other medical products through the buying group.

Nor did Mr. Kiani know, when Masimo approached Premier in 1998, that Mallinckrodt had paid $1 million to belong to Premier's Innovation Institute. That unit promised to find ways to get new technology into hospitals.

Mallinckrodt was also one of 12 limited partners investing millions in Premier's venture capital fund, the Premier Medical Partner Fund. Some of the limited partners had Premier contracts.

Premier says suppliers got no special favors by financing either the institute or the fund. But, several small manufacturers say, the money solidified an already close relationship that big suppliers had with Premier.

Unaware of these arrangements, Masimo officials had a favorable first impression of Premier. ''We walked out of there thinking we had made it,'' one of them said.

Device Gets Good Reviews

Indeed, Premier's technical staff had high praise for Mr. Kiani's technology, called Masimo SET.

That staff's 1999 report reads like a Masimo sales brochure: ''Clinical trials conducted and published by well-respected physicians in the U.S. indicate that Masimo SET has significant clinical advantages to neonates and some highly critical adult patients.''

The report added, ''We can conservatively say Masimo technology will remain superior'' to Nellcor through the remainder of 1999.

Masimo says it never saw the internal report. Instead, Premier told the company that more study was needed, then took nearly two years before finally rejecting Mr. Kiani's oximeter.

By then, Nellcor had come out with its own improved model.

''They basically stonewalled us,'' Mr. Kiani said. Premier said the long delay was due to staff turnover and Masimo's slow response to information requests.

Shown a copy of Premier's confidential report praising his product, Mr. Kiani said he believed that not only is he a victim, ''but they are lying to their members and the hospitals they are representing.''

Premier officials said they based their rejection of Masimo's device on a survey of member hospitals. Most of the medical personnel surveyed were unfamiliar with Masimo but were pleased with the Nellcor device.

Still, of the 20 that were familiar with Masimo's product, 15 said it was ''more accurate than other pulse oximetry devices or eliminates false alarms,'' Premier's records show.

Premier said that its survey and its conclusions were fair, and that it also took into account what few scientific research papers

existed on the topic.

Novation said it awarded a contract to Nellcor, rather than Masimo, for financial and clinical reasons.

Both groups say hospitals can buy products from anyone, but there are financial penalties for buying too many supplies from outside the group, like lost discounts or less money back at the end of the year from their buying group.

What happened to Masimo, Mr. Kiani says, underscores why more innovative medical devices are not getting into hospitals. ''I doubt a company like Masimo could ever get funded now,'' he said.

Mr. Norling of Premier disputes that. ''We do not know of any company with a truly innovative and market-ready product that does not have a contract with Premier, if the company wants one,'' he said. Premier now runs a program it says has helped smaller companies with new technology get contracts.

As for Mallinckrodt, its new corporate parent, Tyco International, said Nellcor had won contracts for one reason: its oximeter was superior. ''Nellcor competes vigorously, fairly and ethically to earn and retain the business of Premier'' and other buying groups, John H. Masterson, a Tyco lawyer, said in a statement. Neither Mallinckrodt nor Nellcor agreed to interviews.

But Dr. Sola, the doctor who said Masimo helped reduce eye damage in infants, says the battle he had to fight just to get the device in his hospital caused him to question the whole group buying process.

''In a country with freedom of choice, this was the hardest thing for me to understand,'' said Dr. Sola, who is from Argentina. ''If the baby was choosing consciously, we know what the baby would choose.''

A Big Company Loses Out

Questions about the fairness of Premier's selection process have also been raised by other companies, and not all of them small.

St. Jude Medical, a large manufacturer of pacemakers, wanted a Premier contract, but two principal competitors — Medtronic and Guidant — already had it. Premier required St. Jude to demonstrate that its pacemaker had medical advantages the other brands did not; in Premier's words, that meant showing ''breakthrough'' technology.

To help evaluate St. Jude's claims, Premier formed an expert panel of six cardiologists, including Dr. Anne Curtis at the University of Florida.

Dr. Curtis said St. Jude claimed it could operate a pacemaker on less electricity, meaning the implanted battery would last longer. ''When the battery runs down the patient has to come in for replacement surgery,'' Dr. Curtis said.

On Sept. 19, 2000, the panel concluded: ''In light of the increased device longevity and ease of use, the expert panel agreed unanimously that St. Jude's breakthrough claim is substantiated.''

But that is not what Premier reported to its contracting committee. Instead, it said the experts had found only a ''theoretical breakthrough potential,'' and never mentioned the unanimous expert conclusion.

''Why did we bother?'' said Dr. Curtis after being shown a copy of how Premier represented her panel's findings. ''Was it just going through the motions to say you had an expert panel so then you can do what you want?''

Another panel member, who requested anonymity, said, ''This is not an honest process.''

Last March, Premier's contracting committee rejected St. Jude's request after concluding that the product's battery did not last appreciably longer than others.

Asked how it represented the experts' report, Premier said it did so ''accurately.''

But St. Jude does not agree. ''Premier's conduct makes no sense from the perspective of offering the best patient care at a fair price,'' said Peter Gove, a company spokesman. ''We can only speculate as to whether ulterior motives could be driving Premier's behavior.''

Some Hospitals Seek Alternatives

For all the criticism, Premier and Novation enjoy much support among the nation's hospitals. One reason is the annual checks, some totaling hundreds of thousands of dollars, that are their share of what manufacturers pay the buying groups.

''A lot of health care folks at the end of the year say, 'Geez, we're in the hole! Oh, wait a minute, we've got this money coming back,' '' said Mr. Dickson of Providence Health.

Hospitals have also slashed their purchasing staffs, leaving them with little expertise to oversee their buying groups or to find better deals on their own.

''Waste and inefficiency in health care is every bit as bad as everyone says it is,'' said Trevor Fetter, the chairman and chief executive of Broadlane, a smaller buying group.

No one knows how much money the buying groups save hospitals. Eugene S. Schneller, a professor at Arizona State University who has studied the issue, said the groups do provide benefits, although some hospitals can get good deals on their own.

Some hospitals are now questioning the wisdom of staying in the big buying groups.

Davis Barber for The New York Times

Joe E. Kiani, with his pulse oximeter, says he was locked out by the big groups, which have exclusive contracts with his competitor.

Premier returned about 22 percent of its revenue last year to member hospitals. VHA returned 20 percent last year and Novation's other affiliated group, University HealthSystem Consortium, typically returns about 40 percent. The rest went for overhead, salaries, investments, and various programs.

''No, we are not satisfied with the amounts we are receiving,'' said Dennis A. Hall, the chief executive of the Baptist Health System in Birmingham, Ala., which buys through Novation.

Consorta, a smaller buying group, says it returns about 68 percent of its revenue.

While smaller buying groups also accept fees, they say they operate differently. John Strong, Consorta's chief executive, said his group does not invest in suppliers because that ''may affect the willingness of organizations to rigorously evaluate all competitors and all product options.'' Consorta limits fees to 3 percent.

Mark Moyer, vice president for marketing for Amerinet, another smaller buying group, said his executives cannot sit on supplier boards. ''We aren't going to line any pockets here,'' Mr. Moyer said.

Premier suffered a major blow last summer when Trinity Health of Novi, Mich., whose chief executive, Judith C. Pelham, had been on Premier's board, decided to stop using the buying group.

''We wanted to reduce the cost of our supplies,'' said Stephen Shivinsky, a Trinity spokesman. ''As a Catholic nonprofit, we believe we have a responsibility to be good stewards of our resources.''

Nicholas C. Toscano, who oversees purchasing for Virtua Health in New Jersey, says his hospitals do their own buying, and save money. ''There are no administrative fees in the contract,'' he said. And that means cheaper prices, he added.

''We just gave our nurses some significant increases in salaries,'' he said. ''We're expanding our emergency rooms. We're improving our operating rooms.''

Senator Patrick J. Leahy, Democrat of Vermont, said hospitals, not suppliers, should pay for buying groups. ''The hospitals are going to be even more attentive to how they're performing,'' he said. ''Because, after all, they're paying for it.''

When a Buyer for Hospitals Has a Stake in Drugs It Buys

This article was reported by ***Walt Bogdanich, Barry Meier*** *and* ***Mary Williams Walsh*** *and was written by Ms. Walsh.*

Dr. Tom Ferguson was puzzled when a patient on an IV drip of the antibiotic gentamicin suddenly experienced a sharp fall in blood pressure and a racing pulse. Then it happened to a second patient.

When a third patient began to shake uncontrollably just 10 minutes after beginning her gentamicin IV, Dr. Ferguson, an infectious disease specialist in Texas, knew what to do: stop giving the medicine, and find out who made it. In this case, the antibiotic came from American Pharmaceutical Partners.

After other doctors reported that the company's gentamicin had made some patients sick, American Pharmaceutical pulled the drug from the market in 1999.

It would not be the last of American Pharmaceutical's troubles. Yet the company has grown rapidly into one of the nation's leading suppliers of injectable generic drugs. One reason: it has what so many medical-supply companies covet — a national contract with Premier Inc., one of the hospital industry's biggest buying groups, serving more than 1,500 hospitals.

Premier officials say they select products for their quality and low prices. But Premier also had a financial interest in seeing the drug company succeed.

MEDICINE'S MIDDLEMEN

One Group's Conflicts

Premier helped to set up American Pharmaceutical in 1996, then steered hospital business to it. For this help and an initial $100 investment, Premier received American Pharmaceutical stock that was worth $46 million when the company went public last year. Premier says it also receives a percentage of the money that hospitals spend buying American Pharmaceutical's drugs.

If American Pharmaceutical has helped Premier, it has also been good for two former Premier executives.

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William J. Nydam, once an executive vice president of Premier, received stock options as an American Pharmaceutical director. He has since left Premier, but his options were worth $1.2 million at the stock's initial offering price.

Palmer Ford, who worked for Premier's venture capital unit, received an undisclosed number of American Pharmaceutical options for consulting work after he had left the buying group, Premier said.

In its brief history as a drug maker, the company has recalled or withdrawn 20 drugs and the government has warned it three times to fix serious quality control problems. A Food and Drug Administration official said the company "had probably more problems than the average firm but it sounds like they worked them out."

Federal authorities are also investigating whether American Pharmaceutical and its parent company, American BioScience, in which Premier also has a stake, conspired with a major drug maker to keep a cheaper generic cancer drug off the market — a charge the companies deny.

That Premier could help turn a company with virtually no assets six years ago into one that raised $144 million in its initial public offering in December underscores the buying group's enormous market power. It also illustrates the potential conflicts of interest that exist in the world of medical-supply commerce, where billions of dollars worth of goods and services change hands each year with little public oversight.

Hospital buying groups are middlemen, negotiating contracts with suppliers of products and services. But unlike most other purchasing agents, these groups are not financed by the hospitals that buy products, but by the companies that sell them, raising questions about whose interests the buying groups serve. The two biggest groups, Premier and Novation, account for $34 billion in annual sales, covering about half of the nation's nonprofit hospitals.

Premier or its investment fund has also held financial interests in more than 20 medical supply and service companies, about 10 of which, like American Pharmaceutical, had at one time or another contracts or business ties with Premier.

Premier denies that its financial holdings affect who gets contracts. In the case of American Pharmaceutical, Premier's goal was "to encourage the success of a new company providing a new channel of generic drugs," said James K. Gardner, a lawyer representing Premier, in a letter to The New York Times. Premier says it is happy with the company's performance.

Mr. Gardner added that Premier's relationship to American Pharmaceutical was not the norm. "It would be totally inaccurate and misleading to portray this relationship as representative of Premier's business practices as a whole," he said.

But Senator Herb Kohl, a Wisconsin Democrat and chairman of the antitrust subcommittee, called Premier's ties to American Pharmaceutical — which he first learned about from The Times — "scandalous."

"They're not to enrich themselves in any way," Senator Kohl said. "They should have no conflict of interest. None at all."

The senator's subcommittee plans a hearing next month to examine the financial links between hospital buying groups and suppliers. Those links, and the potential conflicts of interest that they raise, were the subject of a recent inquiry by The Times.

"These buying groups were created to keep health care costs down," said Larry R. Holden, president of the Medical Device Manufacturers Association, a Washington-based trade group of mostly small businesses. "If they have done some of the things that you say they've done, how in that business model are we saving the health care consumer money?"

A Drug Maker's Rise

Untested Partner Is Transformed

On July 7, 1997, Premier announced briefly that it had struck a deal with American Pharmaceutical Partners to sell drugs to Premier's hospitals. The statement did not mention Premier's financial interest in either American Pharmaceutical, based in Los Angeles, or its controlling shareholder, American BioScience.

Nor did Premier say that its new supplier existed back then mostly on paper. As a small drug broker, it made no drugs, owned no factories and had few assets.

Moreover, American Pharmaceutical was named one of Premier's elite "corporate partners" — companies that were able to sell their products to Premier hospitals under favorable terms. That status was held then by just seven global companies like Johnson & Johnson and Merck. Both of those had revenues in the billions of dollars. American Pharmaceutical had a mere $85,000 in net sales the previous year.

In selecting such an untested company, Premier was putting its faith in the drug company's chief executive, Dr. Patrick Soon-Shiong, a surgeon who had little background in the generic drug trade.

Dr. Soon-Shiong had gained fame briefly in the mid-1990's with miraculous-sounding results from an experimental treatment for Type 1 diabetes, the most devastating form of that disease. Several national news organizations reported that his star patient, 38-year-old Steven Craig, appeared to be much better after receiving a transplant of insulin-producing pancreas cells.

Premier, mindful that hospitals might benefit from such a breakthrough, had its venture capital unit invest about $4 million in the doctor's research companies in 1996.

But some researchers and diabetics began questioning Dr. Soon-Shiong's results — questions that continued as years went by.

Dr. Andrew J. Drexler, director of Mount Sinai's Diabetes Center in New York, said, "He was never able to reproduce it."

Mr. Craig, after several years of praising his treatment, put the barrel of a gun to his head in 1998 and pulled the trigger. His widow, Peggy Craig, said that he was despondent over his poor health.

Dr. Soon-Shiong defended his research in a brief interview, saying Mr. Craig "made a major contribution to mankind."

While the medical research continued, Premier and Dr. Soon-Shiong came up with a quicker path to success — selling generic drugs to hospitals. Beginning in 1996, American Pharmaceutical began to broker drugs for companies like Fujisawa USA. Fujisawa hired American Pharmaceutical partly because it knew that Premier, as a part owner, "could guarantee us or ensure we would get more business with Premier," a Fujisawa USA executive vice president, Theron E. Odlaug, said in court papers.

Another drug company, Sicor Inc., paid American Pharmaceutical as much as 10 percent of its net sales to Premier hospitals. That relationship ended in litigation that was settled out of court.

American Pharmaceutical was only a "toll taker," Craig Lea, a Sicor vice president, said. The company, in his view, was simply selling "access" to Premier hospitals. "That is what it was," he said. "It was access. You got a chance to get in the door."

By 1998, American Pharmaceutical had sufficient funds to buy two money-losing plants owned by Fujisawa of Japan.

Quality Problems Arise

An Antibiotic Is Withdrawn

American Pharmaceutical thought it could turn those plants around. A memo seeking to raise money for American Pharmaceutical cited, among other things, its close ties to Premier as evidence that it might do better than Fujisawa had.

That proved prophetic. American Pharmaceutical, one Wall Street analyst recently noted, took just six months to reverse what had been nine consecutive years of operating losses reported by Fujisawa.

While Premier may have helped jump-start American Pharmaceutical — Premier got more drug company stock based on sales — American quickly adopted a strategy of selling to other buying groups, including the biggest, Novation. As it did with Premier, American Pharmaceutical paid Novation fees that were a percentage of hospitals' purchases of its drugs. Neither group would say how much it was paid.

But if sales were good, American Pharmaceutical had to deal with manufacturing problems, some inherited from Fujisawa. Just weeks before American Pharmaceutical took over the Fujisawa plants in June 1998, federal regulators began receiving reports of patients getting sick from the antibiotic gentamicin. By the end of the year, the Centers for Disease Control and Prevention would call the outbreak an epidemic traceable to one Fujisawa plant.

In November 1998, American Pharmaceutical voluntarily withdrew its gentamicin. It blamed the adverse reactions on hospitals' giving patients too much of the drug too quickly, a problem noted by the F.D.A. But the agency also found "unusually high" levels of potentially dangerous endotoxins in some lots, and inspectors said the drug company had failed to investigate thoroughly why patients were getting sick. American Pharmaceutical said the drug's endotoxin levels were within allowable limits.

American Pharmaceutical resumed selling gentamicin in June 1999, but after nine more patients became ill, the company withdrew the product again, the F.D.A. said. Another company also withdrew its gentamicin — it, too, had sickened patients.

To learn why some gentamicin had elevated levels of endotoxins, the F.D.A. visited a Chinese company that had supplied materials to Fujisawa, American Pharmaceutical and the other company. The Chinese plant was found to be seriously substandard.

American Pharmaceutical's gentamicin problems stopped after it switched suppliers.

But the company's troubles with the F.D.A. did not end. During one F.D.A. inspection in 1999, the agency discovered that American Pharmaceutical had manufactured some Adenoscan — used to dilate blood vessels during heart tests — in chipped and leaking glass vials.

The agency inspectors regarded the situation as so serious that they considered taking legal action, but American Pharmaceutical recalled the product instead.

There were other recalls. For one widely used obstetrical drug, oxytocin — given to speed labor and to control postpartum bleeding — hospitals reported that the American Pharmaceutical drug appeared subpotent, F.D.A. records show. In some cases, the hospitals said, women endured long labors or heavy bleeding. The company recalled one shipment in late 1999, but said the product was within specifications.

Last October, the F.D.A. threatened for the third time to seek a court order to shut an American Pharmaceutical plant if it failed to improve certain quality controls.

Jack C. Silhavy, American Pharmaceutical's general counsel, said: "We, like virtually every other manufacturer of pharmaceutical products in the United States, from time to time voluntarily recall certain product lots." The company has spent $35 million to upgrade its facilities and added more than 50 people to work on quality control, he said. The F.D.A. recently gave the company a clean bill of health.

A Separate Inquiry

Was Generic Drug Kept Off Market?

In 2000, another agency, the Federal Trade Commission, began its own inquiry into American Pharmaceutical. The F.T.C. wanted to know whether the drug maker and its parent colluded with Bristol-Myers Squibb to keep inexpensive generic versions of Bristol's life-extending cancer drug, Taxol, off the market.

Just as Bristol's exclusive right to market Taxol was about to expire in 2000, American BioScience filed what one rival, Ivax, called a "sham" lawsuit that temporarily blocked other companies from selling generic versions of the drug. American BioScience said it was trying to protect its own patent on a Taxol product that had not yet come to market.

Bristol, American BioScience and American Pharmaceutical all deny any wrongdoing, and they are contesting legal claims against them. A lawsuit by the Cobalt Corporation, a Milwaukee insurer, says it had to pay excessive claims for patients treated with Taxol.

William Zaferos, Cobalt's spokesman, expressed surprise when told that Premier held a financial interest in American BioScience and American Pharmaceutical.

"If your philosophy is to hold down the price of health care," he said, "then there would seem to be a tremendous amount of irony when you're putting your money into a company that is bent on keeping prices high."

Cross-Pollination

Board Seats At a Supplier

Helping to oversee American Pharmaceutical and its parent company were two Premier officials — Mr. Nydam, on American Pharmaceutical's board, and Mr. Ford, on American BioScience's board. Mr. Nydam left Premier in November 1999, and Mr. Ford left in January 2000. Neither man agreed to be interviewed for this article.

Premier says its executives may sit on corporate boards and earn options, but they are supposed to turn them over to Premier. But Premier officials say they learned that Mr. Nydam and Mr. Ford had received American Pharmaceutical options personally only after The Times began asking about them. Premier says it is "inquiring further into the matter."

Premier, which retains a seat on American Pharmaceutical's board, would not divulge the nature of Mr. Ford's consulting or the value of his options.

A recent biography of Mr. Ford released by his current employer cited his role in Premier's "venture investments" in American Pharmaceutical and American BioScience.

Premier, a private for-profit company, said its stock in American Pharmaceutical would benefit its 890 owner hospitals. The 700 nonowner hospitals that buy through Premier are not entitled to any disbursements.

Premier also acknowledged recently that two additional executives had received options from two other companies in which Premier had a financial interest. Premier said it had since reached a financial settlement with one of those executives and was investigating the other; both have left Premier.

A Potential Conflict

Despite some problems with its drugs, American Pharmaceutical Partners has grown quickly. One reason is its contract with one of the largest hospital buying groups, Premier, which also has a financial interest in the drug company. Critics say this creates a conflict of interest.

BUILDING A COMPANY

MARCH American Pharmaceutical Partners (A.P.P.) is founded.

APRIL Premier's venture capital unit invests $4 million in A.P.P.'s parent.

OCT. Premier acquires 1,052,640 shares of A.P.P. for $100.

JULY Premier awards a contract to A.P.P. to sell drugs.

JUNE William J. Nydam, a Premier executive, is listed as a director of A.P.P. and Palmer Ford, another Premier executive, is listed as a director of A.P.P.'s parent company.

SEPT. Premier's stake in A.P.P. is now 7.4 percent. Premier has also received an undisclosed amount of cash from A.P.P.

DEC. A.P.P. goes public at $16 a share. Premier's stake is worth $46.6 million. Mr. Nydam's options are now worth $1.2 million.

'96 | '97 | '98 | '99 | '00 | '01

KEY

FINANCIAL TRANSACTION

FACTORY INSPECTION

JUNE A.P.P. buys a factory that has been receiving reports of adverse patient reaction to gentamicin, an antibiotic.

JULY F.D.A. inspects A.P.P.'s newly purchased plant. The findings are inconclusive.

NOV. Adverse reactions to the gentamicin continue. The F.D.A. reinspects the plant, finding violations. A.P.P. withdraws the drug from the market.

JULY A.P.P. begins to sell gentamicin again; more reactions are reported.

NOV. The F.D.A. returns to the A.P.P. plant and finds "serious deviations" from manufacturing standards.

SEPT. A.P.P. and its parent come under investigation by the Federal Trade Commission for possibly conspiring to keep a generic cancer drug off the market.

NOV. The F.D.A. warns seizure or injunction could result if violations are not corrected.

NOV. A.P.P. gets a clean bill of health from the F.D.A.

REGULATORY ISSUES

The New York Times
Illustration by Ingo Fast

Dave Gatley for The New York Times

William J. Nydam, left, a former executive vice president of Premier, received stock options as an American Pharmaceutical director. Ampicillin, above, is among American Pharmaceutical's products.

NEW YORK, TUESDAY, APRIL 23, 2002

Hospital Products Get Seal of Approval at a Price

By BARRY MEIER

A group that says its mission is to find the best medical supplies for some of the nation's biggest children's hospitals is endorsing certain products in return for a percentage of sales and, in some cases, shares or warrants from their manufacturers.

Companies that do not pay the group do not get its endorsement. ''If they don't pay, they don't get the seal,'' said Edward Kuklenski, senior vice president of the group, the Child Health Corporation of America.

As a result, some experts question not only the seal's value, but also whether a medical group should be making money from endorsing medical products.

Founded in 1985, Child Health's 38 pediatric hospital members purchased nearly $1 billion of supplies last year. The group awards its seal to certain products and then helps

MEDICINE'S MIDDLEMEN

One Group's Double Identity

market them to hospitals. But the arrangement differs significantly from those of other groups that evaluate products. Unlike the Child Health Corporation, Consumers Union, the publisher of Consumer Reports, and its equivalent in the medical world, ECRI, do not accept money from manufacturers.

Also, these groups compare a number of products in head-to-head tests and then publish the results of which fared better and why. But Child Health does not test products against similar devices and does not disclose the names of products that fail to win its seal.

The chief executive of ECRI, considered the country's most-respected laboratory for testing medical products, said that even if the devices Child Health approved were good, it could not know without comparative testing whether they were the best.

''If your objective is to have the best product available then you are definitely cutting off options,'' said the executive, Jeffrey C. Lerner.

The Child Health program is similar in some respects to an endorsement plan begun five years ago by the American Medical Association that was later abandoned after widespread criticism.

Officials of Child Health, based in the suburbs of Kansas City, Kan., said hospital personnel carefully tested every product the group endorsed. They added that the program had helped set high product standards and improved pediatric care.

''We established a Good Housekeeping seal for products we deter-

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mined to be efficacious for pediatric care,'' Mr. Kuklenski said of Child Health.

The Good Housekeeping seal, which is not connected to Child Health's plan, is essentially a guarantee by Good Housekeeping magazine to replace or refund the cost of any advertised product that proves to be defective. But Good Housekeeping, unlike Child Health, does not also serve as a supposedly unbiased purchasing agent whose job is to find the best products at the best price.

Child Health said products ''would be turned down for failure to excell'' in areas like safety and efficacy. The group did not specify how many products had been denied its endorsement.

Mr. Kuklenski's comments came in an interview last year, and Child Health subsequently responded to questions in writing.

The selling of product endorsements is an example of the potential conflicts of interest among some groups that help hospitals nationwide buy medical supplies. Groups like Child Health are supposed to act as objective middlemen, using the collective buying power of their member hospitals to negotiate with manufacturers for the best prices on the best products. But unlike other purchasing agents, hospital buying groups like Child Health are financed not by the hospitals that buy supplies but by the companies that sell them.

Two major buying groups — Novation and Premier Inc. — dominate the industry, though neither endorses medical products. Novation and Premier negotiated contracts covering $34 billion in supplies last year. Child Health is a much smaller group.

Child Health, like Premier and Novation, has aggressively expanded beyond purchasing. Along with its endorsement program, Child Health has also invested more than $25 million in 37 medical products companies. Until three years ago, it also ran a unit that manufactured and marketed pediatric products.

Some medical experts like Mr. Lerner of ECRI worry that in running such overlapping businesses buying groups may be pursuing their own interests ahead of those of their hospital members.

''The middleman has grown into the business,'' Mr. Lerner said.

Child Health's pediatric hospital members include Children's Hospital of Boston and Children's Hospital of Philadelphia. Several of those institutions said in statements that they were happy with the group.

The group's endorsement program, which earned about $350,000 last year, is run through an arm called the Alliance of Children's Hospitals. To win its Seal of Acceptance, a manufacturer's product is reviewed by a panel that includes clinicians to make sure that it performs as promised, Mr. Kuklenski said.

Since 1990, the group has issued endorsements of 44 products, and 21 currently hold its seal. Typically, a company that receives an endorsement will pay a fee of 0.5 percent to 1.5 percent of product sales to the alliance.

Mr. Kuklenski said the manufacturers' payments, which are distributed to member hospitals after expenses, were used to help market the product and so represent reduced selling costs for manufacturers. He added that the program also helps

smaller companies that do not have contracts with buying groups.

Some companies eager to break into the hospital business have issued warrants or sold stock to Child Health or its wholly owned subsidiaries, or agreed to pay fees of as high as 3 percent of their sales.

For example, Iomed, which makes devices that deliver drugs subcutaneously without needles, agreed in 1996 to give the Alliance of Children's Hospitals a warrant for 44,791 shares of company stock in connection with the endorsement of its product. At the same time, Iomed, based in Salt Lake City, sold 37,202 shares of its stock for $250,000 to Child Heath's venture capital fund, records show.

Another company, Luther Medical Products, of Tustin, Calif., agreed in 1996 to pay up to 3 percent of sales to the alliance if certain revenue goals for its products were met, records show. Ronald Luther, the chief executive, said he viewed Child Health's program as a way for his small company to enter the market.

Mr. Kuklenski said that Child Health had taken stock in Iomed instead of cash because it was a small company and that it had never exercised its warrant because the stock price had fallen. He added that the fees collected from Luther Medical were very small because its sales goals were not reached.

Another manufacturer said he was approached by a Child Health official about getting the group's endorsement only to be told he would have to give up 6 percent of his product's sales in return.

Joe E. Kiani, chief executive of that company, Masimo, said he refused to pay because he thought hospital groups were supposed to pay him for his products, not the other way around. Masimo makes a device, called a pulse oximeter, that measures blood oxygen.

''We thought they were taking advantage of us because we were a little company,'' he said.

Mr. Kuklenski said that while his group had discussed investing in Masimo he did not recall any conversations about an endorsement. He added that because the group's seal had marketing value it simply was not given away.

Manufacturers that receive the seal hold it up as a major independent endorsement. And Novation, the buying group that represents about 25 percent of the nation's nonprofit hospitals, cited the award of Child Health's ''prestigious seal of acceptance'' in 2000 to a pulse oximeter made by Nellcor when it recently awarded that company a contract for such devices.

But Eldon Petersen, a senior vice president at Novation, said he had not known that Child Health's endorsement carried a price.

Securities and Exchange Commission records show that Mr. Kuklenski, the group's senior vice president, owned about 90,000 shares in the publicly traded parent of Promedix, a company that ran an Internet-based ordering system. In mid-2000, when Child Health awarded a contract to Promedix, he announced and praised the deal, saying a Child Health panel had found Promedix ''the only e-commerce solution to enable access to a marketplace of premium specialty products.''

At that time, Mr. Kuklenski's stake in Promedix's parent, Ventro, was worth about $2.5 million and Child Health's venture capital fund also held Ventro stock, records show. About seven months after Mr. Kuklenski praised the deal, Promedix failed.

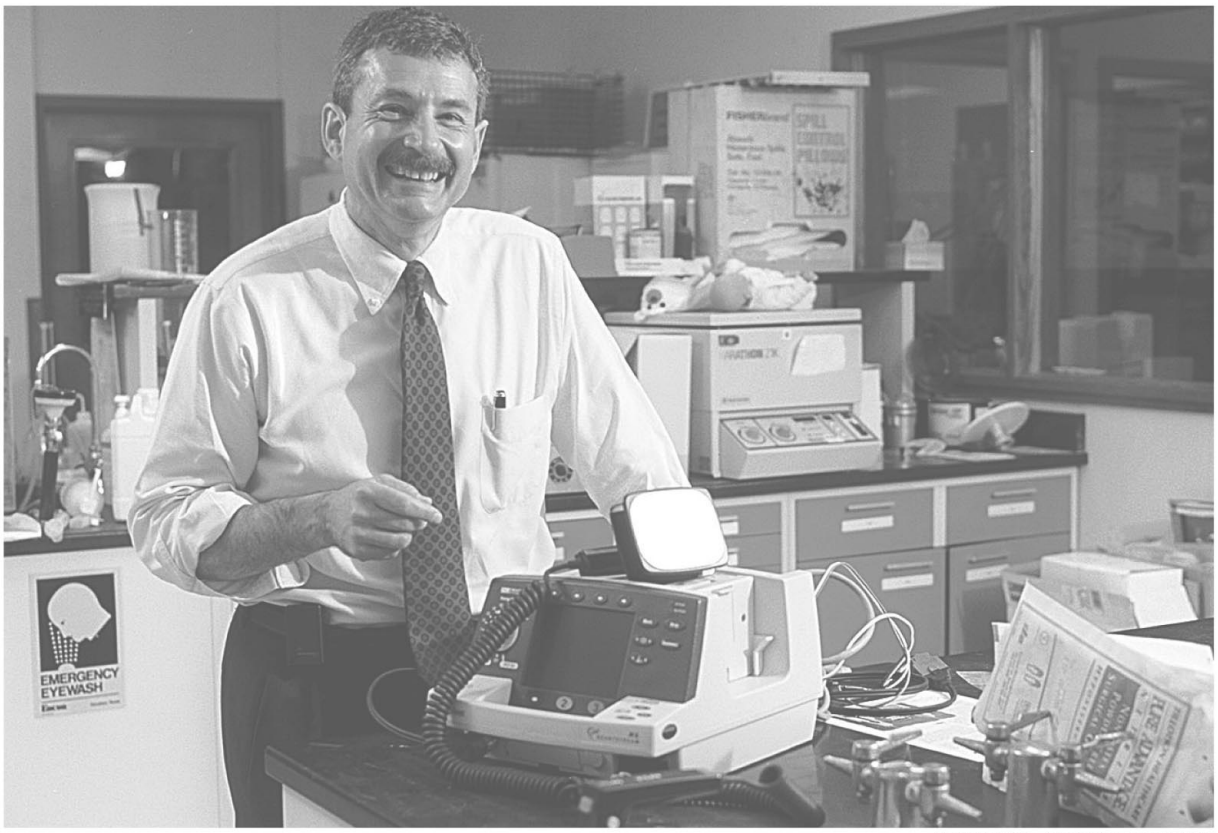
In a written response, Mr. Kuklenski said his investment in Promedix had been made in compliance with his group's ''conflict of interest policy and was fully disclosed at the time.'' Mr. Kuklenski also stated that he had ''invested in additional companies'' in which Child Health had invested, but he declined to elaborate.

While Child Health's guidelines allow its executives to invest in companies in which the group also invests, officials of several hospitals that belong to Child Health said they were unaware of Mr. Kuklenski's investment at the time of the group's deal with Promedix.

Medicine's Middlemen

Articles in this series are examining purchasing groups that buy medical products for about half the nation's largest nonprofit hospitals. Two previous articles, on March 4 and March 26, described the close financial ties between those groups and medical supply companies. The series is available online:

nytimes.com/business



Sal DiMarco Jr. for The New York Times

Jeffery C. Lerner of ECRI worries that some buying groups may be putting their interests over those of hospitals. ECRI does not accept money from manufacturers, but companies that get the Alliance of Children's Hospitals' endorsement from the Child Health Corporation of America give it a percentage of sales or, in some cases, give it shares or warrants.

NEW YORK, TUESDAY, APRIL 30, 2002

Hospitals Find Big Buying Groups May Not Come Up With Savings

By MARY WILLIAMS WALSH and BARRY MEIER

MEDICINE'S MIDDLEMEN

Bigger but Not Always Better

Two groups that dominate the purchasing of medical products for about half the nation's nonprofit hospitals have long said they exist to save money, pooling the influence of thousands of hospitals to negotiate a good price on the best products.

But some hospitals are finding otherwise. They have learned that they can do better on their own, and are now raising questions about the need for the huge buying groups, which negotiated contracts last year for $34 billion in supplies.

A new, preliminary study by the research arm of Congress, the General Accounting Office, is also challenging the buying groups' claims.

In the study, a copy of which was obtained by The New York Times, the G.A.O. found that using a big buying group ''did not guarantee that the hospital saved money.'' In fact, prices negotiated by buying groups ''were often higher than prices paid by hospitals negotiating directly with vendors'' — in some cases ''at least 25 percent higher,'' the G.A.O. said.

At issue are hundreds of millions, if not billions, of dollars in annual health care costs, much of it paid indirectly by taxpayers through programs like Medicare and Medicaid and by private insurers.

The G.A.O. report is to be presented today at the first Congressional hearing on the operations of these buying groups. The hearing will be held by the antitrust subcommittee of the Senate Judiciary Committee. The subcommittee is headed by Herb Kohl, Democrat of Wisconsin.

The report comes a day after one of the largest buying groups, Premier Inc., took out a full-page ad in Roll Call, a newspaper covering Capitol Hill.

In the ad, Premier took credit for ''holding down the costs of health care for American businesses, tax-

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payers, and consumers.''

The G.A.O. cautioned that its initial report was limited in scope and said it planned a broader inquiry. Government auditors surveyed hospitals in only one city for the prices they paid for two categories of products: pacemakers and hypodermic needles with safety features to prevent accidental sticks. Some of the hospitals surveyed bought such products through contracts negotiated by buying groups, while others made their own deals.

Officials of the two biggest buying groups, Premier and Novation, which together negotiate contracts on behalf of about half of nonprofit hospitals, said they had not seen the study. Told of its findings, they disputed its methods and results.

Jody Hatcher, vice president for marketing for Novation, based in Irving, Tex., said the findings were skewed because the study looked at only two products rather than a wider range of supplies.

''I think you have a flawed study,'' he said. He and Premier officials said that if hospitals could really save money on their own they would be leaving buying groups in droves.

But the G.A.O. survey, even with its limitations, adds to the growing debate about whether groups like Premier and Novation really lower the cost of medical products for the hospitals that own the groups or buy through them. Some hospital executives said in interviews that the groups did save them money, while others said they saved many millions of dollars by going it alone.

Unlike other purchasing agents, the groups buying supplies for hospitals are financed by the products' manufacturers and distributors, which pay the groups' fees based on a percentage of sales. That arrangement has led to questions about whose interests the buying groups really serve.

Hospitals that have broken away from buying groups cite several reasons for getting lower prices than they would have through the groups. One is the ability to negotiate with a larger number of manufacturers. Another is shorter contracts that allow hospitals to take advantage of falling prices. A third is that manufacturers freed of the need to pay fees to the buying groups will pass on the savings to hospitals.

Two years ago, for example, executives of a 10-hospital chain in Iowa decided to end their relationship with Premier. Officials of the Iowa Health System said they found that each time they renegotiated a supply contract, they beat the buying group's price by 12 percent to 14 percent. They are already saving $7 million a year, and expect that figure to grow as more contracts are redone.

Duncan Gallagher, executive vice president of Iowa Health, said that for years the common wisdom was that hospitals that tried to buy on their own would pay more. He expects that his system may eventually save 30 percent to 40 percent.

''The people who are saying it is impossible are wrong,'' Mr. Gallagher said.

Nicholas C. Toscano, who oversees purchasing for the Virtua Health chain of hospitals in New Jersey, said administrative fees and incentive payments that suppliers pay buying groups for handling their contracts can also raise prices for hospitals.

Virtua studied the benefits and costs of buying through a large group and decided it could do better on its own. ''If the administrative fee is 3 percent, we normally save, right off the top, 3 percent,'' Mr. Toscano said.

Another factor driving up buying-group prices, Mr. Toscano said, is contract language that allows manufacturers to lock in price increases over several years, even at times when the price of the products is falling on the open market.

He said that by writing contracts for shorter periods, Virtua has found opportunities to take advantage of falling prices.

But Premier officials say they also renegotiate prices on contracts and some hospitals add that the size of the big buying groups can command better prices.

''It is very simple economics,'' said Keith Callahan, a vice president of Catholic Healthcare West, a large hospital system based in San Francisco that belongs to Premier.

The G.A.O. review is a rare effort to examine independently the impact of buying groups on hospital prices.

In the case of pacemakers, it found that while some hospitals using buying-group contracts got better prices on some models, they got much worse prices on others. The G.A.O. also found that big groups like Premier and Novation often did not get better prices for the products under study than did smaller purchasing groups.

''This lack of consistent price savings is contrary to what would be expected for large'' buying groups, the study found.

The survey also found that large hospitals — those with more than 500 beds — often got lower prices on their own than by using a buying group. By contrast, small and medium hospitals tended to do better using a buying group. But even in that group, government auditors found, the experience of hospitals differed.

Medicine's Middlemen

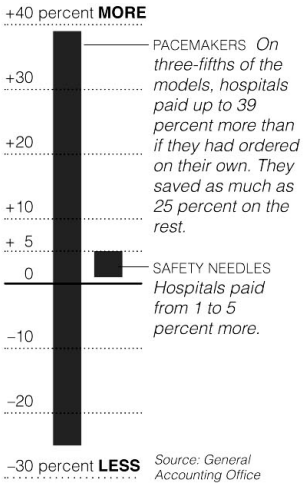
Articles in this series, which began on March 4, are examining purchasing groups that buy medical products for about half the nation's largest nonprofit hospitals. Previous articles described the close financial ties between those groups and medical supply companies. The series is available online:

nytimes.com/business

Paying More

A pilot study by the General Accounting Office shows that hospitals buying two common items, safety needles and pacemakers, often paid more when using group purchasing organizations — which are supposed to be saving them money — than did hospitals purchasing the items on their own.

AMOUNT HOSPITALS PAID WHEN THEY USED BUYING GROUPS
Compared with what they paid when ordering on their own



The New York Times

A Mission To Save Money, A Record Of Otherwise

By MARY WILLIAMS WALSH

One of the nation's most powerful hospital-owned buying groups, which has a mandate to help nearly 1,500 nonprofit hospitals hold down costs, has posted a rise of 84 percent in its own spending over the last three years, the group's internal records show.

The group, **Premier** Inc., has dismayed some hospitals by expanding into areas that have little to do with its core mission of finding the best products at the best prices.

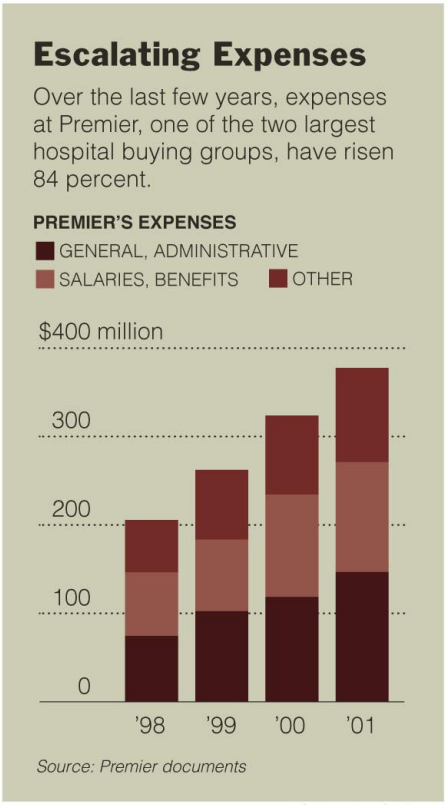
Some hospital executives have recently started working together to examine Premier's books and learn whether the group's rising costs are justified. "Salaries and bonuses and staffing would be one area we've been looking at," said one participant, Maurice W. Elliott, the chairman of **Methodist Healthcare** Inc., which is based in Memphis.

Several hospital executives also privately expressed irritation at the buying group's practice of holding conferences and business meetings at luxury resorts, where Premier spends tens of thousands of dollars for speeches by world leaders and diplomats who are not directly involved in hospital care issues in this country.

James K. Gardner, a lawyer for Premier, declined to answer specific questions, but said in a letter to The New York Times that the group's expenses had simply "increased commensurately" with its growth. As for conferences and speeches, Mr. Gardner said that Premier's spending in those areas was not excessive and that hospital executives benefited from exposure to developments in "government and politics and other fields that can affect the nation's health care system."

Premier and another giant buying group, **Novation**, say they save hospitals money,

Continued on Page 7



The New York Times

MEDICINE'S MIDDLEMEN

A Giant's Rising Costs

Continued From First Business Page

not only by negotiating group discounts for their members but also by acting as a counterbalance to the market power of large medical suppliers.

Recent articles in The Times have reported that Premier and Novation are paid by the medical products companies they are supposed to evaluate objectively, raising questions about whether the groups are finding the best products at the lowest prices. The articles also disclosed that Premier and some of its executives received stock or options from medical supply companies with which Premier did business.

Afterward, members of a Senate panel overseeing antitrust issues accused Premier and Novation of conflicts of interest and self-dealing — accusations that both groups deny. Congressional investigators also released a preliminary study suggesting that the big buying groups might be paying too much for certain medical supplies.

The panel gave the two hospital-owned groups until the end of July to propose significant changes or risk having the government do it for them. A trade association representing the buying groups is expected to hand in a draft code of conduct at the end of this week. The draft will then be sent to other interested parties — doctors, hospitals and medical supply companies — for their comments.

Medicine's Middlemen

Articles in this series, which began on March 4, are examining purchasing groups that buy medical products for about half the nation's largest nonprofit hospitals. Previous articles described the close financial ties between those groups and medical supply companies. The series is online:

nytimes.com/business

Unlike most purchasing agents in other businesses, Premier and Novation are largely financed by the companies that sell medical products. In its most recent fiscal year, for example, Premier received $307 million in fees from such companies, representing a percentage of what its hospitals buy. If revenue from Premier's other businesses and investments is included, the buying group took in $515 million in that fiscal year, which ended June 30, 2001.

Total expenses, which include salaries and benefits, were $378 million, up 84 percent from $206 million three years earlier. The group's revenue also grew, by 76 percent, over that period. Some hospital executives attribute part of the rising expenses to a growing bureaucracy within Premier devoted to consulting services, electronic commerce, programs aimed at improving the quality of medical care and other businesses.

Senator Mike DeWine, an Ohio Republican, expressed concern at a recent Senate hearing that the big groups had "strayed from their original purpose." He cited "the extensive range of businesses and programs" run by the buying groups.

Premier executives say they are providing services that hospitals want and need.

Any revenue beyond what Premier needs to cover expenses is given back to its owner hospitals or held on their behalf. In fiscal 2001, Premier made cash payments of $115 million to its owner hospitals, or 22 percent of its total revenue, according to Premier records made available by a hospital official. That payment appears to reverse a trend in which Premier had given out increasing amounts of money to its owner hospitals each year.

In 2000, Premier gave its owner hospitals a larger amount, $173 million, or 40 percent of its total revenue, records show. Premier said the reduction reflected an unusually large payment in the fiscal year 2000 and did not indicate a future trend.

When asked about its returns to hospitals, Premier, a private, for-profit company, first provided a separate set of distribution figures for previous years but then withdrew them, saying they were incorrect. It

Monetary Aggregates		M1	M2	M3	Monetary base (St. Louis)
Averages in billions	Week ended May 27	1,193.8	5,564.3	8,138.2	679.8
	Week ended May 20	1,181.0*	5,547.1*	8,110.5*	675.04*
Annual growth rate in percent	Latest 3 months	-0.2	+2.1	+1.4	+7.3
	Latest 6 months	+1.1	+4.4	+4.8	+10.8
	Latest 12 months	+6.3	+7.9	+8.7	+10.2

Reserve Data		Total reserves	Borrwd. reserves	Extnd. credits	Reqd. reserves	Excess reserves
Averages in millions	Week ended June 05	—	120	0	—	—
	Week ended May 29	—	136	0	—	—
	2 weeks ended May 29	39,344*	127	0	37,984*	1,360*
	2 weeks ended May 15	38,821*	100	0	37,629	1,192*
	April	41,075	60	0	39,745	1,329

Aggregates are seasonally adjusted. *Revised. *Source: Federal Reserve*

subsequently declined to provide accurate ones.

Premier said the large 2000 payout included not only that year's revenue but also the return of some money it had held back in the previous three years, when it was reassessing its capital needs after a merger.

By contrast, **Consorta Catholic Resource Partners**, another hospital purchasing group, returned 66 percent of its total revenue to members in 2001, 59 percent in 2000 and 58 percent in 1999, its first year of operations.

Mr. Gardner, the lawyer for Premier, said Premier's payout rate was better expressed as a percentage of the money it received from suppliers only — a narrower measure of revenue that yields a higher percentage of disbursement, or about 37 percent in 2001. By this comparison, Consorta returned 71 percent to its hospitals that year.

Some hospitals question Premier's expansion beyond its core mission.

Some hospital executives wonder whether Premier could return still more money to hospitals if it had better control over its spending.

In 2001, salaries and benefits rose to $124 million, up 53 percent from $81 million two years earlier. "That would be a big increase," Mr. Elliott of Methodist Healthcare said. "Some of the board members are raising some of the same issues."

According to an internal document from June 2000 charting Premier's compensation schedule, members of the group's "executive team" — who work directly under Premier's chief executive, Richard A. Norling — can earn more than $750,000, including bonuses. The next lower rank of executives, called group leaders, can earn up to $450,000. Premier would not disclose how much Mr. Norling is paid.

A Premier spokeswoman said the compensation chart was outdated and might contain some inaccuracies, though she offered no specifics or any current compensation figures. Instead, Premier provided an outside consultant's opinion that Premier's "compensation philosophy and the compensation paid are reasonable and appropriate."

Separately, several hospital officials said Premier sent the wrong message by spending too much on its conferences. Two years ago, a person close to Premier said, it paid tens of thousands of dollars to Margaret Thatcher, the former British prime minister, to speak before hospital executives at the Greenbrier resort in West Virginia. Early this year, Premier hired Madeleine K. Albright, the former secretary of state, to speak to a similar group at the Phoenician, a luxury resort in Scottsdale, Ariz. The agency that represents Dr. Albright says her standard speaking fee is $70,000 to $80,000.

"It was, to me, the height of hubris," one hospital official said, adding that Dr. Albright's speech had little bearing on the issues his financially struggling nonprofit hospital faced or on the state of affairs at Premier.

"If I keep you focused on golf and good food, you are not going to ask questions," he said, referring to Premier's management.

A former Premier executive who attended the Greenbrier conference said he felt uneasy about Premier's paying for a hotel room that, according to receipts, cost nearly $500 a night. Another Premier executive said his group paid for him to attend what he described as an educational conference sponsored by a drug company at the Ritz-Carlton on the Caribbean island of St. Thomas.

Several executives also expressed concern over what they said was the failure of Premier to distribute its audited financial statements regularly.

A spokeswoman for Premier said, however, that the organization did provide audited financial statements to any owner hospitals that requested them and presented an overview of the data at its annual meeting.

Several of the hospital executives who have been questioning Premier's spending are also looking at the structure of Premier's board and whether its makeup represents the diverse interests of member hospitals.

"More representation on the board is the big issue," Mr. Elliott said. Despite these questions, though, Mr. Elliott said he continued to believe in Mr. Norling's leadership and called him a "very competent and ethical executive."

A new member of Premier's board, Lloyd H. Dean, said that "anytime there are escalating costs, as a board member and as an owner, I would be concerned." But Mr. Dean, who is president and chief executive of **Catholic Healthcare West** in San Francisco, said he had not been on the board long enough to know whether Premier's costs were out of line.

Mr. Dean said he was confident that the board and Mr. Norling were willing to make changes, if necessary. "We want to serve our members and serve our patients," he said.

Earlier this year Premier hired Kirk O. Hanson, a professor of business ethics, to review many of the ethical issues raised in recent months. Professor Hanson, who runs the Markkula Center for Applied Ethics at Santa Clara University in California, said, "They have given me free run of the place." He promises to release his recommendations publicly later this year.

Questioning $1 Million Fee in a Needle Deal

By BARRY MEIER
with MARY WILLIAMS WALSH

MEDICINE'S MIDDLEMEN

Special fees, exclusive deals.

A group that buys medical supplies for a third of the nation's hospitals received two highly unusual payments totaling $1.1 million from a company that had received the exclusive right to market hypodermic needles and other products to the group's hospitals.

Several legal experts said in interviews that they found the payments to the buying group, **Novation**, troubling because they might be construed as kickbacks if they were used to obtain business.

In one case, Novation said the nation's biggest needle maker, **Becton Dickinson** & Company, paid it $1 million in ''special marketing'' fees in 2000 in connection with a three-year contract for syringes and needles. The payment came at a time when health care workers and others were saying that some Becton Dickinson products did not provide enough protection for medical workers against accidental needle sticks, which can transmit pathogens like the AIDS virus. Smaller manufacturers were also beginning to challenge Becton Dickinson with new safety products.

Becton Dickinson, a major maker of medical devices and diagnostic systems based in Franklin Lakes, N.J., said it had also made a separate payment of $100,000 to Novation in connection with a smaller, four-year contract for intravenous catheters that took effect in 1999.

Novation, which is based in Irving, Tex., did not specifically tell its member hospitals about the special payments, and it did not respond to repeated requests for documents showing that it had disclosed the fees. Novation had previously said in Senate testimony that it disclosed ''all fee

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information'' to its members.

Senator Herb Kohl, the Wisconsin Democrat who heads a Senate panel that is investigating big buying groups like Novation, said he did not know of the Becton Dickinson payments to Novation.

''Why do they have to give them a million dollars?'' Senator Kohl asked in an interview. ''Why should they do that if it's a question of the supplier having the best product — best quality, best price?''

He said he was particularly troubled that Novation had signed an exclusive contract with Becton Dickinson that did not include products from any competitors.

The payments came to light through Becton Dickinson documents obtained from a former Novation employee and a federal official, and they were subsequently confirmed by both Becton Dickinson and Novation. The payments are among about a dozen similar ones that Novation said it had accepted from medical product companies. The group would not identify those companies or the amounts received.

Becton Dickinson and Novation say that the payments were proper — intended to compensate for a lower sales commission on the products involved — and that the money played no role in the awarding of the contracts.

But James Sheehan, an assistant United States attorney in Philadelphia who specializes in health care cases, said he had ''serious questions'' about whether such payments were legal under federal laws against kickbacks. Citing Justice Department rules, he declined to say whether he would investigate.

Buying groups are legally allowed to receive fees from manufacturers based on a percentage of sales to hospitals. But in approving that exemption from federal rules against kickbacks, lawmakers urged regulators to monitor the fees ''for possible abuse, particularly those in excess of 3 percent'' of sales. Some buying groups say that they will not accept fees above 3 percent and that they do not take ''special marketing fees.''

Documents show that Becton Dickinson agreed to pay the special $1 million fee to Novation as well as a 3 percent sales fee.

Buying groups like Novation are supposed to help hold down costs for hospitals while insuring that hospitals buy the best and safest medical products. But unlike purchasing agents in other industries, hospital buying groups are not financed by the buyers of products, in this case the hospitals. Rather, they are financed by the medical product manufacturers, raising questions about whose interests they serve.

A preliminary Congressional study this year found that hospitals can often buy hypodermic safety needles more cheaply outside the big buying groups. The groups disputed that finding.

The disclosure of the Becton Dickinson payments gives new ammunition to critics who say that big buying groups favor companies that can afford to pay large fees, putting smaller manufacturers at a disadvantage even when their products may be better.

The panel led by Senator Kohl has asked buying groups to adopt significant changes by the end of July or face government action. The Federal Trade Commission is also looking into whether the groups are inhibiting competition. Those actions followed a series of articles in The New York Times about the groups' business practices.

Health care workers and representatives of competing syringe companies also reacted with anger when they learned of Becton Dickinson's payments to Novation.

''When you are talking about products that can make the difference between life and death, it shouldn't be about financial incentives,'' said Karen Daley, a Massachusetts nurse who contracted the AIDS virus after an accidental needle stick at a Boston hospital.

Thomas J. Shaw, chief executive of **Retractable Technologies** Inc., a rival syringe and needle manufacturer in Little Elm, Tex., lost out to Becton Dickinson on the Novation contract. ''They didn't ask us to pay them a $1 million fee,'' Mr. Shaw said, calling the payment improper.

Medicine's Middlemen

Articles in this series, which began on March 4, are examining purchasing groups that buy medical products for more than half the nation's hospitals. Previous articles described the close financial ties between those groups and medical supply companies. The series is available online:

nytimes.com/business

Retractable has sued in federal court in Texarkana, Tex., accusing Novation and Becton Dickinson, among others, of violating antitrust laws by conspiring to use buying groups to monopolize the hypodermic needle market. All the defendants have denied wrongdoing.

Novation said the extra $1 million was intended to offset lost revenue, because Becton Dickinson's payment of 3 percent on each sale was lower than the percentage paid by the previous contractor.

Becton Dickinson says it ended up making only about $800,000 in added payments in connection with the hypodermic contract, though Novation says the company paid the full amount.

Novation said it was Becton Dickinson that offered the extra payment, while Becton Dickinson said it was ''negotiated by Novation.''

Officials of both Novation and Becton Dickinson declined to be interviewed for this article. But in written responses to questions, both denied that the added payments had any influence on the contract awards for hypodermics or catheters.

For his part, Gary M. Cohen, president of Becton Dickinson's medical systems division, wrote that his company won the Novation contracts on the basis of ''decades of leadership in quality, value and service.''

Novation said the contracts were awarded on ''clinical quality factors'' and with input from hospital members. The group said that Becton Dickinson would have won the contract without the extra money and that part of the added revenue was distributed to member hospitals.

Mr. Cohen also said that Becton Dickinson had taken the lead in developing safer products to help eliminate accidental needle sticks. ''No other company has done as much as we have to protect health care workers from needle-stick injuries,'' Mr. Cohen wrote.

But in October 1999, the same month Novation awarded the hypodermic contract to Becton Dickinson, the nation's most respected testing laboratory for medical products rated Becton Dickinson's best-selling safety syringe, called the SafetyLok, ''unacceptable,'' saying it might actually cause needle sticks.

In a later study in 2001, the testing lab, called ECRI, upgraded the device to ''not recommended.'' As of last October, the SafetyLok was no longer Becton Dickinson's best-selling safety syringe. Another safety syringe produced by the company had higher ratings in both tests.

Separately, Becton Dickinson says it agreed to pay a special fee of $100,000 for the IV catheter contract ''to offset an anticipated loss of revenue due to a change in contracts.'' Novation had previously bought its IV catheters from another company.

Novation also said the payment was intended to increase its revenue. But a former Novation official said the $100,000 payment was unrelated to the contract and was intended to help Novation pay for a new communication system.

These special fees are a potential problem, federal regulators say, because they were made early in each contract. Two years ago, the inspector general of what is now called the Centers for Medicare and Medicaid Services issued an informal advisory opinion, asserting that substantial upfront payments ''appear to pose a significant risk of fraud and abuse.''

That opinion stated that such payments were ''difficult to trace'' and tended to lock in the purchasers.

Novation says it received about a dozen special advance payments from suppliers that were awarded contracts. But the group says it recently stopped taking advance payments because of concerns raised by hospitals, though it declined to say when it had received the last one.

Mr. Sheehan, the federal prosecutor, said that based on the limited documents he had reviewed, the special marketing fees did not appear to reflect any specific services in exchange for the payments, raising questions to him about why they were paid.

Robert Simpson, chief executive of **Cooperative Services of Florida**, a buying agent that contracts for supplies used at several hospitals that belong to Novation, said the special marketing fees might simply inflate product prices — the opposite of what buying groups are supposed to do.

Larry Dickson, an official for **Providence Health System** in Seattle, which buys through Novation, said he did not know about the special payments and called them ''totally inappropriate.''

Julia Naunheim Hipps, a nurse and needle-stick victim from Missouri, said big buying groups like Novation had served as the biggest roadblock to getting safer products into hospitals because of their financial ties to big manufacturers like Becton Dickinson.

Ms. Hipps said she contracted hepatitis C from an infected needle in 1999. ''The concept of group purchasing is now a detriment to those working in the health care industry,'' she said in written testimony submitted to the Senate panel that is investigating the big buying groups.

Ms. Hipps said she felt angry and betrayed by the way hospitals buy medical supplies. ''I am the end result,'' she said.

Accusation Of Conflicts At a Supplier To Hospitals

By MARY WILLIAMS WALSH

She was an eager new employee. Her company was the leader in its field, with a stated mission she could take pride in: to lower health care costs by helping hospitals buy supplies more cheaply.

But in a matter of months, Cynthia Fitzgerald was out of work — fired, she says, after complaining about her company's business practices, including pressure to steer millions of dollars in business to a former official of the buying group's predecessor.

''I don't look good in orange or in stripes,'' Ms. Fitzgerald said she told her supervisor after objecting to the way another contract was handled. Before long, the company, Novation, arranged to have her ''escorted off the property by guards.''

Ms. Fitzgerald's accusations, which are disputed by Novation, are among the most serious to be leveled at this private company, which negotiates medical supply contracts worth $20 billion annually for a third of the nation's hospitals. **Novation** and another big buying group for hospitals, **Premier** Inc., have been accused in recent Congressional hearings of self-dealing and conflicts of interest that may have compromised their ability to find the best products at the lowest prices.

MEDICINE'S MIDDLEMEN

A Question of Favoritism

Ms. Fitzgerald, 44, made her comments recently under oath in a sealed deposition obtained by The New York Times. It is part of a lawsuit that a small medical device maker, **Retractable Technologies**, filed in a Texas federal court, accusing Novation and Premier of effectively locking it out of the hospital market.

The two groups, which negotiate contracts for about two-thirds of the nation's hospitals, deny the accusations and are contesting them in court.

Novation officials declined to be interviewed for this story. But in a statement, the group said it could not comment on Ms. Fitzgerald's accusations because they had been made in a sealed deposition.

''We can, however, state that any decision to end Ms. Fitzgerald's employment

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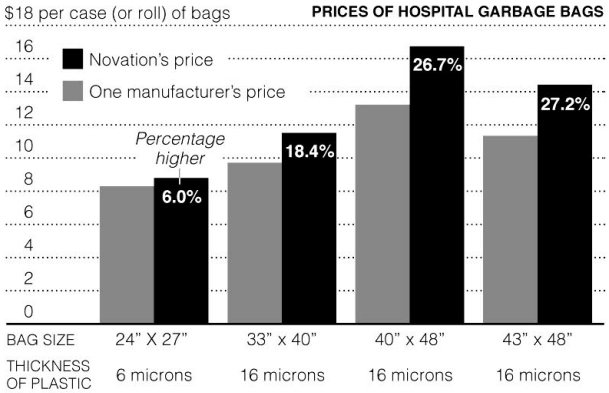
Garbage Bags: a Comparison

Novation, a company that negotiates supply contracts for hospitals, says it typically gets the best deals on products. But an analysis of the prices paid for garbage bags by one hospital in the Southeast shows that it would pay more if it bought through Novation.



Source: CoalesCo

The New York Times

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was based on her work performance only,'' the statement added.

Ms. Fitzgerald, who once found inspiration in reciting the speeches of Martin Luther King to churchgoers, worked at Novation for just half a year — long enough, and at a level high enough, she says, to witness contracting processes that made her uncomfortable. ''Some of the methods were not above board,'' she testified.

''There were undue pressures that were placed on contracting officers'' to award contracts not necessarily based on price or quality, said Ms. Fitzgerald, who was herself a contracting officer.

Ms. Fitzgerald specifically complained that Novation for years had given special treatment to **Heritage Bag**, a garbage bag company in Texas represented by the former official of the buying group's predecessor, John M. Doyle. Mr. Doyle is the founder and former president of VHA Supply, a buying group that in 1998 merged with a smaller group to form Novation.

''I had been informed I would be fired if I didn't award it properly,'' she said in her deposition. Ms. Fitzgerald said she tried to find out why a seemingly mundane garbage bag contract was ''sacrosanct.''

''The only explanation that I ever received was that the contract belonged to Heritage Bag, it was going to belong to Heritage Bag, and that the last person who tried to remove that contract from Heritage Bag was in jeopardy of losing their job,'' she testified.

Novation's hospitals have been spending about $11 million a year on Heritage Bag's products, the buying group said in its statement.

After Ms. Fitzgerald asked why Heritage's bags — called can liners — seemed to be getting favored treatment, her managers suddenly began questioning her competence and fired her, she said.

Mr. Doyle said favoritism played no role in Heritage getting contracts from Novation.

''We give them as high a quality liner as there is in the industry, and the most competitive pricing in the industry,'' Mr. Doyle said.

Heritage Bag declined to answer questions about Ms. Fitzgerald's accusations.

The Times, in examining Ms. Fitzgerald's charges, found that Mr. Doyle resigned from the buying group in 1986 amid complaints that he had sexually harassed two female employees and discriminated against a third.

''If John Doyle were the last man on this planet to have a job, I would starve before I'd go to work for this man again,'' said Deborah Long, who sued Mr. Doyle and his employer in federal court. She said Mr. Doyle abruptly demoted her during a staff meeting after she refused to let him into her hotel room at a convention. Her lawsuit has since been settled.

Mr. Doyle declined to be interviewed about the three women's charges.

Soon after Mr. Doyle began representing Heritage Bag as a manufacturer's representative, the company got its first contract with his former employer. Heritage has held that contract uninterrupted ever since — for more than 13 years. Mr. Doyle said he received a commission every time a Novation hospital bought Heritage's garbage bags, but he declined to reveal the amount.

So how good is Novation's contract?

For one thing, Novation recommends Heritage bags to its hospitals as a good buy. Even so, individual hospitals, consultants and smaller buying groups surveyed by The Times reported that if hospitals shop around they can get better deals on many of those same Heritage bags or on comparable bags made by other companies.

One medium-sized hospital in the Midwest found, for example, that if it were to switch to Novation's products, it would add about $10,000 a year, or about 11 percent, to its garbage-bag budget. The hospital executive who analyzed the prices asked not to be named because of a confidentiality agreement.

''There is much better bag pricing outside the Novation-Heritage agreement'' — sometimes more than 20 percent better, said Bob Bissell, a principal of CoalesCo Ltd., which sets up purchasing cooperatives for small groups of hospitals.

Two smaller buying groups separately compared their prices with Novation's prices for identical bags and each reported that its products were about 3 to 5 percent cheaper, on average, when the numbers were weighted to reflect the most frequently purchased bags. Both of these groups requested anonymity for fear of angering Heritage.

New concerns that hospitals aren't getting the best prices on supplies.

Some critics of Novation believe that products like the garbage bags may cost more because of the fees manufacturers must pay in connection with contracts, which are then built into their prices.

In a written response to questions about its prices, Novation said, ''It is possible that on any given day and with respect to any given product, a hospital — especially a large hospital system — may be able to obtain a better price than Novation.'' But, the buying group said, these individual cases did not negate the overall economic benefits its contracts bring to participating hospitals.

Ms. Fitzgerald joined Novation in 1998 after working as, among other things, a pharmaceutical representative. She said she initially earned praise from management for the way she went about picking companies to supply Novation's 2,500 hospitals nationwide.

Novation made her a senior contracting official, a position with considerable power.

Many companies, particularly the smaller or newer ones, say a supply contract with Novation, the nation's largest buying group for hospitals, can make or break them financially.

To secure these contracts, companies promise to pay Novation a percentage of what hospitals spend on their products, usually 3 percent or less of sales, but sometimes much more. Heritage Bag, for example, paid Novation more than 8 percent in fees.

Ms. Fitzgerald said in an interview that she recalled that Novation pushed to raise more and more revenue from suppliers. To satisfy her managers, she said, she persuaded one contractor, **Becton Dickinson**, to make an extra upfront contribution of $100,000 in connection with the awarding of a ''sole source'' catheter contract.

''I hate to say it, but I'm the one who dreamed it up; they told me they wanted to get revenue,'' Ms. Fitzgerald said, noting that she thought Becton Dickinson deserved the contract, even without the extra payment.

She said she was so proud of having secured the payment that she arranged to have Novation take a picture as the check was being handed over.

She said the extra money was to be used to finance a communication system within Novation.

Federal regulators have cautioned that such upfront payments might be construed as illegal kickbacks if they were used to obtain business.

Both Becton Dickinson and Novation say the payment was proper and legal.

On another occasion, Ms. Fitzgerald complained about a major contractor that appeared to be soliciting confidential information about a competitor's bid. She said she did not want to cooperate. She testified: ''I turned to my manager, who was sitting next to me, and said, 'Oh, no. I don't look good in orange or in stripes.' ''

She said her complaints were unheeded.

Ms. Fitzgerald said she first heard about Heritage Bag's apparently special status within Novation from colleagues and from her supervisor. Later, she said, she told her managers she wanted nothing to do with awarding that contract. ''I was not going to do that particular contract and if it was going to be done, that management would have to do it,'' she testified.

Soon after, Ms. Fitzgerald said, the accolades she had once received from management became criticism. ''Everything changed,'' she said. ''Suddenly, I was incompetent.''

During her deposition, Novation produced her personnel file. In it, according to questions asked by Novation's lawyer, Ms. Fitzgerald was criticized for such offenses as failing to complete reports on time, and failing to complete projects. Ms. Fitzgerald objected strenuously to these characterizations of her work history.

''I remember those issues coming to light after I made my accusations,'' she testified. ''I thought it was very unusual that none of those issues had ever been raised prior to then.''

After her dismissal, Ms. Fitzgerald founded her own medical distributorship. She offered her deposition only after being subpoenaed and said in her testimony she feared Novation would retaliate against her for speaking out about her experience.