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The Seattle Times
Sunday
Seattle Post-Intelligencer

AUGUST 7, 2005
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SPORTS TICKER **Marcus Tubbs shines in Hawks scrimmage**

Drug researchers leak secrets to Wall St.

SEATTLE TIMES INVESTIGATION | Despite confidentiality contracts, doctors are divulging details of their ongoing drug research — for a fee — to elite investors eager to get an edge in the market. Experts say the practice breaks insider-trading laws, violates medical ethics and jeopardizes vital research. And government regulators seem to know nothing about it.

INSIDE THE CALL | Investors quiz a cancer-research doctor about drug research: a recorded conversation > A6
> Hear a recording of the conversation and see documents revealing what doctors said at seattletimes.com/drugsecrets

The damage that selling secrets can do > A6
Some doctors defend what others call "outrageous" > A8

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BY LUKE TIMMERMAN
AND DAVID HEATH
Seattle Times staff reporters

Doctors testing new drugs are sworn to keep their research secret until drug companies announce the final results. But elite Wall Street firms — looking to make quick profits — have found a way to harvest these secrets:

They pay doctors to divulge the details early.

A Seattle Times investigation found at least 26 cases in which doctors have leaked confidential and critical details of their ongoing drug research to Wall Street firms.

The practice involves doctors at top research universities from UCLA to the University of Pennsylvania, and powerful financial firms including Citigroup Smith Barney, UBS and Wachovia Securities.

In 24 of the 26 cases, the firms is-

sued reports to select clients with detailed information obtained from doctors involved in confidential studies. The reports advised clients whether to buy or sell a drug stock.

Trading stock based on secret information bought from medical researchers is illegal, say legal experts who were told of The Times' findings.

"That's a good way to go to jail," said lawyer Thomas Newkirk, former associate director of enforcement at the Securities and Exchange Commission (SEC).

Whether they are paid or not, medical researchers who talk with Wall Street about their ongoing research violate confidentiality agreements they sign before drug companies allow the drug testing to begin.

Until now, the selling of drug secrets has been hidden from securities regulators and the public, but biotech and Wall Street insiders said the practice is widespread.



"The practice is a moral cesspool."

ARTHUR CAPLAN
Director, Center for Bioethics,
University of Pennsylvania

"Everybody does this.... It's now common practice," said the chief executive of California biotech company Valentis, Ben McGraw, a
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GREG GILBERT / THE SEATTLE TIMES

A Seafair concoction: water, sun and fun

The livin' was easy — and warm — yesterday for Seafair's grand finale weekend on Lake Washington. Sun worshipers, above, lolled in the water along the log boom surrounding the hydroplane course and looked up to catch the aerial show. Look for a reprise of the air show today starting around 11 a.m.: first biplanes are scheduled to fly formation "aerobatics" followed by the U.S. Navy's Blue Angels, who will perform their precision dance in F/A-18 Hornets.

To further quicken the pulse, it's Hydro Sunday. The flying boats are scheduled to tear around the course at speeds approaching 200 mph vying for the Chevrolet Cup 11:30 a.m. to 4:45 p.m. Look for massive crowds on the banks of the lake at Stan Sayres Park and along the log boom. Tickets are \$25 but free to anyone with active military ID and to children younger than 12 with an adult.

SEFAIR |

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CAN ANYONE beat Dave Villwock's Miss Elam in today's Seafair races? > C7

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> For photo galleries and audio of the Blue Angels, go to seattletimes.com/localnews

Russian crew is rescued

BRITISH ROBOT VESSEL FREES TRAPPED SUB

After slow resurfacing, 7 aboard appear OK

Seattle Times news services

PETROPAVLOVSK-KAMCHATSKY, Russia — Seven submarine crew members trapped for nearly three days under the Pacific Ocean were rescued today after a British remote-controlled vehicle cut away the undersea cables that had snarled the vessel.

The seven, whose oxygen supplies had been dwindling amid underwater temperatures in the mid-40s, appeared to be in satisfactory condition, naval spokesman Capt. Igor Dygalo said. They were examined in the clinic of a naval ship, then transferred to a larger vessel to return to the mainland.

"The crew opened the hatch themselves, exited the vessel and climbed aboard a speedboat," said Rear Adm. Vladimir Pepelyayev, deputy head of the naval general staff.

"I can only thank our English col-
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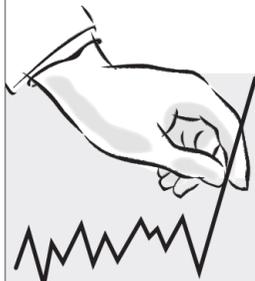
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60% of The Seattle Times newsprint contains recycled fiber. The inks are also reused.



Selling Drug Secrets

“[Doctors] really aren’t supposed to talk. ... But a lot of times it’s a slip of a word here and there.”

DR. RON GARREN, who runs a small hedge fund in Carmel, Calif.

< Leaks

FROM A1

DRUG RESEARCHERS LEAK SECRETS TO WALL ST.

Doctors typically collect \$300 to \$500 an hour

former Wall Street analyst.

The practice of selling drug secrets, The Times found, is being driven by hedge funds, the largely unregulated investment pools that cater to the super-rich. Hedge funds can make money with aggressive strategies that exploit quick price swings in stocks, and the volatile biotech industry provides many such opportunities.

A single drug’s prospects can determine whether a small biotech company’s stock soars or plummets, so any inside information provides a potent investing edge.

Such information is so valuable that elite investors pay up to \$1 million a year to firms known as matchmakers, which pair Wall Street firms with doctors involved in ongoing drug research. Gerson Lehrman Group, the largest matchmaker, claims to have 60,000 doctors available to speak to Wall Street, double the number from three years earlier.

Matchmakers typically pay doctors \$300 to \$500 an hour to talk to elite investors. Some doctors said they can make tens of thousands of dollars a year from such talks.

Drug-company executives say they know about the practice but can’t crack down on the doctors they rely upon for conducting patient testing.

Ordinary investors are victimized when inside information is leaked to select investors. Those who know in advance whether a drug is going to succeed or fail can buy stock low or sell it high to those who don’t know, making quick fortunes by taking advantage of unwitting investors.

And there is a broader cost to society: Leaking details about ongoing research can introduce bias into drug trials and possibly halt development of potentially life-saving drugs, biotech executives said.

“It appalls me, I must say,” said Christopher Henney, a Seattle biotech pioneer who co-founded Immunex, now part of Amgen. “It’s absolutely outrageous that they [researchers] would allow themselves to be corrupted in that way.”

“The practice is a moral cesspool,” said Arthur Caplan, director of the Center for Bioethics at the University of Pennsylvania. “It really just seems to me to be the last straw in the corporatization of American medicine.”

DOCTORS WHO DIVULGE

Elite investors gained when doctors on a drug trial dropped the word that the drug was failing.

Excitement was building in fall 2002 at Isis Pharmaceuticals, a 300 employee Carlsbad, Calif., company, as it wrapped up a study of Affinitak, an innovative drug to treat lung cancer.

Unknown to the company, however, analysts had started making calls to doctors testing the new drug. Despite confidentiality contracts, the doctors were talking.

By late November, Isis’ stock price was plummeting on heavy trading; it lost 20 percent by early December.

A bombshell fell Dec. 6, and suddenly the drop made sense. Andrew Gitkin, an analyst at UBS, a big brokerage firm, issued a research report with a shocking revelation: Doctors on the Affinitak drug trial had talked to UBS and divulged that the drug was not working.

Gitkin’s report sent Isis stock spiraling down even further.

Later that day, a news report confirmed that word of Affinitak’s failure had “spread across Wall Street’s biotech trading floors” for more than a week. Gitkin said in an interview that he believed he “wasn’t the only analyst or investor” who had called the doctors.

That would explain why investors were selling Isis shares, driving the price down. Investors who knew the trial results in advance could have shorted Isis stock — a way to make money when its price falls — and made a quick 30 percent profit.

Isis chief executive Stanley Crooke, an M.D. with a Ph.D. in pharmacology, was furious.

“We were very shocked that somebody would try to do an analysis like that, shocked that any investigators would talk to an analyst and give him impressions and lead him to specific conclusions,” Crooke would say later.

Crooke complained to UBS. He also questioned the doctors testing his new drug, trying — without success — to find the leak, he said.

Three months later, Isis released its Affinitak results and Gitkin’s information was proved correct — the drug was a dud.

Gitkin said he did nothing wrong. “I don’t know who does and who doesn’t sign confidentiality agreements. ... I would assume that if they signed a confidentiality agreement they wouldn’t talk to me.”

Sometimes, hedge funds and brokerage firms pay one well-informed doctor to be quizzed by investment managers in a conference call. But other times, their approach to gathering valuable secrets about drug trials is more sophisticated and wide-ranging.

Recently, Citigroup Smith Barney penetrated a major study to see how an experimental drug fared against a just-approved drug for treating macular degeneration, an incurable eye disease and the leading cause of blindness in the elderly.

The brokerage talked to 26 eye doctors, but they weren’t just any doctors. Twenty of the 26 had researched the experimental drug; 23 of the 26 had researched the other one, meaning that more than half had worked on both. The doctors were able to give Smith Barney valuable comparative information.

Nearly all agreed that the drug still being studied, a product called Lucentis from biotech powerhouse Genentech, would prove vastly superior to the drug that recently had gone on the market, Macugen, made by Eyetech, a smaller company.

But the doctors were more explicit than that. Based on its survey, Smith Barney predicted remarkable results: 97 percent of patients on Lucentis would have stable or improved vision, as measured by how many lines of an eye chart they could read. Smith Barney summarized those findings in a report to select customers May 5.

As it turned out, the numbers were almost exactly on the money. On May 23, not long after Smith Barney’s report, Genentech announced results from its Lucentis study: 95 percent of patients had stable or improved vision — just as predicted by the doctors Smith Barney talked to.

The announcement battered Eyetech’s stock, which lost nearly half of its value in a day. Any hedge fund or other investor who had acted on Smith Barney’s research by betting against Eyetech would have made better than a 40 percent return in just three weeks.

Dr. Scott Pendergast, a lead researcher in the Macugen study who said he doesn’t speak to investors, was shocked when told of the Smith Barney report.

“That’s definitely inappropriate,” Pendergast said. “They’re getting information that was not publicly available.”

The Seattle Times interviewed 15 of the lead doctors on the Macugen and Lucentis research, many of whom acknowledged accepting money to talk

to Wall Street firms. None specifically recalled talking to Smith Barney, but they said they had talked to many investors during the time Eyetech’s stock price was in a steep decline.

All 15 doctors insisted they didn’t reveal confidential or valuable details.

“People will call and ask ‘Do you think this drug is working?’ I’m just being asked to give my gut feeling,” said Dr. David Boyer, a Los Angeles ophthalmologist.

“They’ll ask what I can’t answer,” said Dr. Richard Rosen in New York City, who said he talked on the phone or face to face with investment firms about twice a day for \$300 to \$500 an hour.

“They’re looking for results of trials that aren’t out yet,” Rosen said. “I can’t answer that. I can just answer from my personal experience in how patients seem to respond to certain therapies.”

Even so, Rosen acknowledged his experience can be valuable. “If you treat 20 patients you can get some sense of where a trial is going,” he said.

Some medical researchers say they refuse to talk to hedge funds or stock analysts because they know the aim is to get confidential information.

Dr. Steven Nissen, a cardiologist at the Cleveland Clinic involved in half a dozen ongoing research studies and chairman of a federal Food and Drug Administration (FDA) advisory panel making recommendations on new drugs, said he gets “zillions” of calls from investors who say they simply want to talk about a certain disease.

“As soon as I hear the pitch I know what’s going on,” Nissen said. “The impressions of somebody on the trial are relevant to whether the trial is likely to succeed.”

Dr. Ron Garren, who runs a small hedge fund in Carmel, Calif., and works part time as a cancer doctor, knows this. He admits he pays doctors in an effort to get confidential details about ongoing drug research.

“They really aren’t supposed to talk because of confidentiality,” Garren said. “But a lot of times it’s a slip of a word here and there. You can generally tell from body language if a person running a trial likes the drug or doesn’t. You can generally ferret out, if you’re good, the safety issues.”

One experienced research analyst at a major brokerage firm said he’s studied “elicitation techniques” taught to FBI and CIA interrogators.

“We get them to talk about the weather, or the Mariners, then you pop in your one innocent question you want to know about,” said the analyst, who spoke on the condition that his name not be used. “Then you switch back to whatever it was you were talk-

Continued on next page >

Investors quiz researcher in recorded conference call



Dr. Robert Figlin

In a July 18 conference call, a leading cancer-research doctor at UCLA discussed drug development with at least 10 elite investors, including hedge-fund managers. Dr. Robert Figlin was quizzed about two potential new drugs for kidney cancer: Sutent, a Pfizer drug for which he was a principal researcher, and Sorafenib, which he monitored for safety for Onyx Pharmaceuticals. Brokerage firm Friedman Billings Ramsey hosted the 47-minute call and recorded it. The Seattle Times obtained a copy of the recording.

Jim Reddoch, a biotech analyst for Friedman Billings Ramsey, moderated the call. After Figlin’s introductory remarks, Reddoch invited questions. He also announced that Figlin was speaking for a fee.

FIGLIN: *Totally inadequate, I must say.*

REDDOCH: *If you do well enough, though, we can ramp it up next time, right?*

FIGLIN: *I would hope so.*

This call was timely because drug giant Pfizer was in a race with tiny Onyx Pharmaceuticals, partnered with Bayer, to get FDA approval for competing kidney-cancer drugs. Being first in the market gives a new drug a tremendous sales advantage.

In the weeks leading up to the July 18 call, Wall Street analysts’ reports show they had been trying to figure out whether Onyx or Pfizer would file for approval first.

Onyx announced July 11 it had filed with the FDA. Analysts thought Pfizer had also filed, but the company was being tight-lipped.

But immediately, Figlin, a consultant to Pfizer, gave the listeners detailed timetables of the company’s drug-application plans. Pfizer’s first application for FDA approval of Sutent “will be filed by the end of the summer,” he said.

The value of Figlin’s information became obvious two days later, when Pfizer let slip that it had not yet filed with the FDA. Analysts who had not been on the call with Figlin put out research reports speculating that Pfizer was losing its cancer-drug race with Onyx. That day Onyx shares rose \$2.94 — or 12 percent — on heavy volume.

The next day, July 21, Pfizer responded, saying it would file for FDA approval of Sutent in August — close to the timetable Figlin had provided.

Onyx shares fell 10 percent on the news, nearly wiping out the previous day’s gain.

Hedge-fund handicapping

During the July 18 conference call, Figlin also was asked to “handicap” the results of one of the drug trials. In particular, one hedge-fund manager asked whether Onyx would be able to show that its kidney-cancer drug, Sorafenib, had a “survival benefit” — that patients taking Sorafenib were living longer. A survival benefit is the gold standard for a cancer drug’s success.

QUESTION: *And your bet is ... that there will be a survival benefit?*

FIGLIN: *That’s a good question.*

My bet — am I betting with your money or mine? — my bet is that there will be a survival benefit.

Figlin told listeners he based his bet on information from the leading doctor on the Sorafenib research in Europe, Bernard Escudier. Figlin had learned that 75 percent of the patients on the study were from outside the United States, which would overcome a problem that had arisen in analyzing data from U.S. patients. That meant the ongoing study had a much better chance of showing a survival benefit.

Doctor denies doing anything wrong

In an interview with The Times after the call, Figlin said he talked to Wall Street firms a couple of times a month through matchmaker firms such as Gerson Lehrman Group for \$300 an hour. He said he sees nothing wrong with talking to Wall Street investors as long as doctors discuss only publicly available information.

“I don’t think it’s appropriate for the physician to ever discuss things that are unpublished, or anecdotal,” including any prediction of a drug’s survival benefit, he said.

When asked about his prediction of a survival benefit during the July 18 call, Figlin said he was just expressing his hope for its success.

“I take care of hundreds of kidney-cancer patients, and I’d like to finally have an agent that demonstrates a survival advantage. If they then take that information and decide, ‘Oh, Figlin thinks the trial is positive,’ then they are extracting information and making conclusions on their own dime.”

He said he had talked about “generally available” information but acknowledged he may have discussed information he heard from other doctors on the studies.

— David Heath and Luke Timmerman

Selling secrets can distort data, kill promising drugs

Medical researchers who sell secrets not only can taint ongoing research but — in the worst case — kill off a promising drug, doctors and drug-company executives say.

Dr. Stanley Crooke, the founder of Isis Pharmaceuticals, said leaking information can destroy clinical trials, which are designed to test whether a new drug works.

In most trials, doctors and patients are supposed to be “blinded” — meaning they don’t know who gets the drug or the placebo. This keeps the research free of bias. By talking to doctors, investors are tearing away the blinds.

A doctor who hears from Wall Street that a drug is doing well might be tempted to select healthier patients with a better chance of benefiting from the study. That would distort the findings.

“How physicians feel can define what sorts of patients they actually put in clinical trials. How patients feel can influence a lot of the outcome,” Crooke said. “I was deeply concerned and had been for a long time that practices like this risk the integrity of the clinical-trial process.”

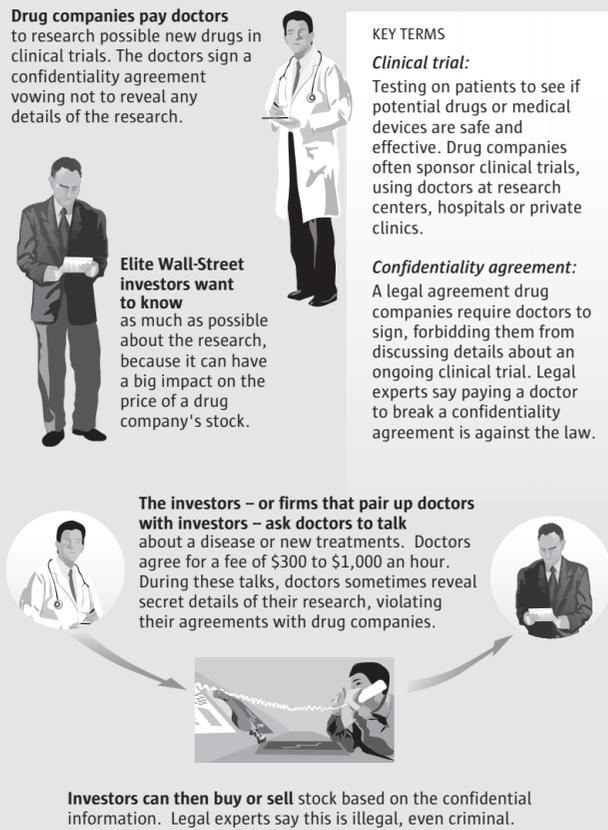
Dr. Drummond Rennie, deputy editor of The Journal of the American Medical Association, said simply, “When the data leaks out, it wrecks the trial.”

Analyzing data is far more complicated than asking doctors for impressions. To do it right, companies must do time-consuming patient follow-up, record detailed health observations, crunch numbers from hundreds of patients, then fact-check it all, said Ben McGraw, chief executive of the California biotech company Valentis.

If Wall Street declares a drug dead before the study is complete, the company may run out of money before the drug is able to prove itself.

— Luke Timmerman

How Wall Street gets the inside scoop on drug testing



KEY TERMS

Stock brokerage:

A financial firm that charges fees to buy and sell stock for investors. Some have research analysts to help customers, including hedge funds, decide how to invest.

Hedge funds:

Mostly unregulated investment funds for institutions and wealthy people. Hedge funds are allowed to make risky investments, such as shorting stock or buying stock with borrowed money. They seek high returns and typically charge steep fees, including 20 percent of profits.

Shorting a stock, or “selling short”:

A technique that allows investors to make money when a stock goes down. An investor borrows shares from someone and sells them. Later, the investor buys shares to give back to the lender. If the price has fallen, the short investor makes a profit.

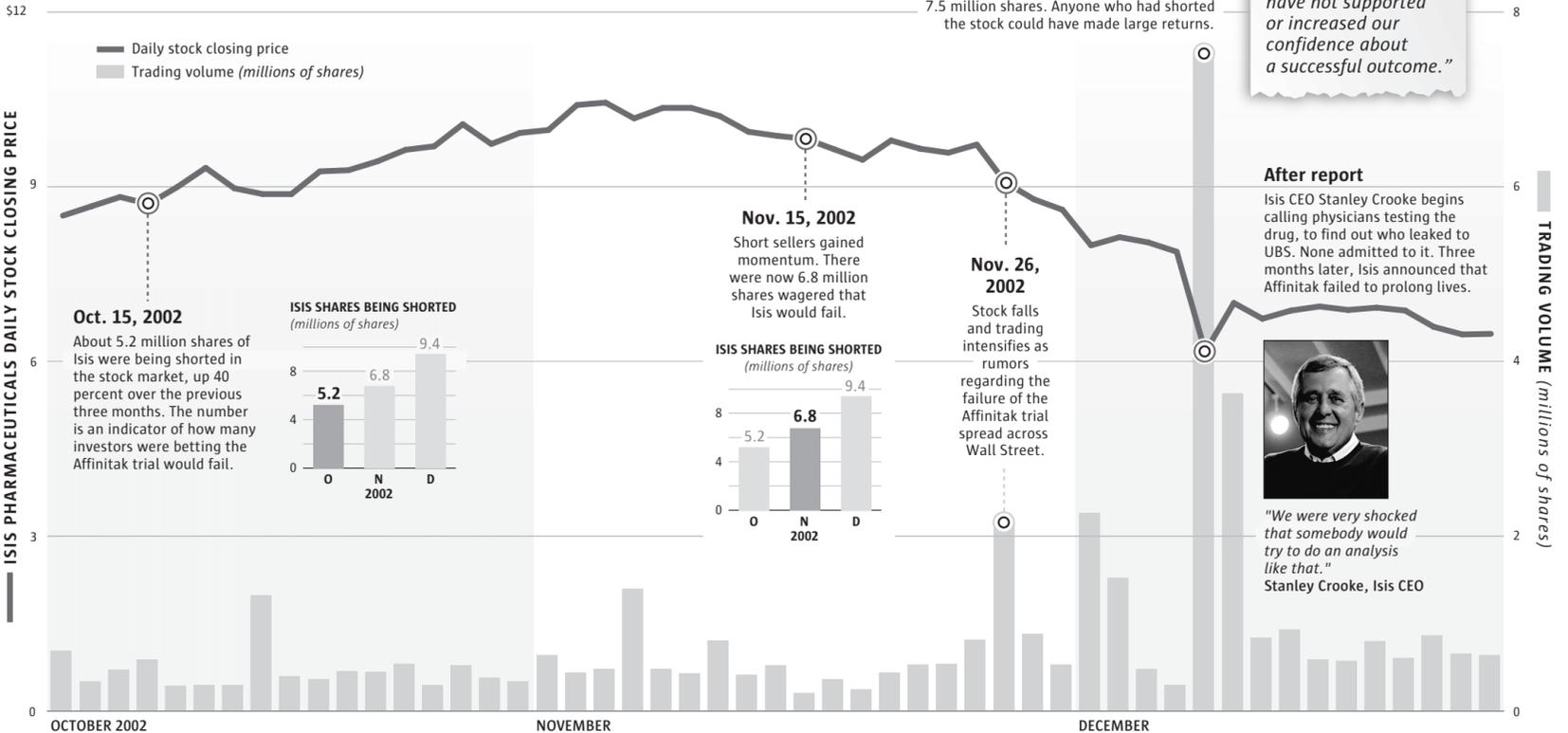
Selling Drug Secrets

“People will go to great lengths and throw a lot of money around to outdo the next person.”

JOE EDELMAN, portfolio manager for a hedge fund

UBS inside report sparks sell-off of Isis stock

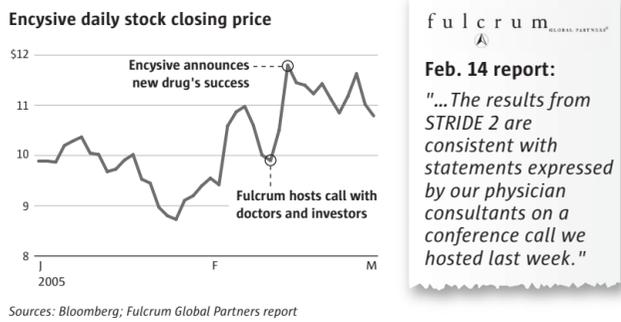
Isis Pharmaceuticals, a Carlsbad, Calif., company developing a lung-cancer drug, Affinitak, was battered in late 2002 when physicians testing the drug leaked results to UBS Warburg, now UBS, a prominent stock brokerage. Under confidentiality agreements signed by physicians testing the drug, all results were supposed to be secret until spring 2003.



KRISS CHAUMONT / THE SEATTLE TIMES

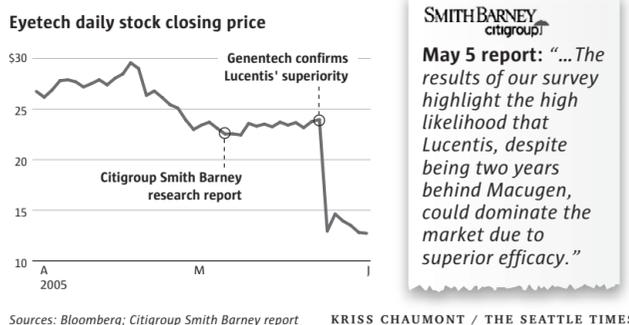
Investors get an early scoop on Encysive

In a phone call, a doctor involved in monitoring research for an Encysive Pharmaceuticals drug for pulmonary hypertension told Wall Street firms not to worry too much about serious side effects. On Feb. 10, Fulcrum Global Partners advised its clients to buy the stock. Four days later, news of the drug's success was announced, and Fulcrum's analyst boasted that its clients already had the scoop.



Analysts foretell Eyetech's fall

Citigroup Smith Barney talked to 26 eye doctors who had tested two competing drugs for macular degeneration, a leading cause of blindness in the elderly. The report declared a drug called Lucentis, from biotech giant Genentech, to be the clear favorite over Macugen, from small Eyetech Pharmaceuticals. Fifteen percent of Lucentis patients were able to read three more lines on an eye chart, the report revealed.



SOME DOCTORS defend activity that others call “outrageous.” > A8

complicated trades that are lucrative for brokerages, such as shorting stock.

One way brokerage houses attract the trading business of hedge funds is by offering them valuable research they can't get elsewhere, said Paul Latta, research director for the brokerage firm McAdams Wright Ragen in Seattle.

Even the best research analysts at brokerage houses agree it's difficult to keep up with the information that hedge funds are able to collect. Many hedge-fund managers are doctors themselves, some from the same elite medical schools as the doctors they are calling.

Quynh Pham, with Delafield Hambrecht in Seattle, was ranked by Forbes magazine this May as one of the top 10 research analysts in the country. Yet Pham, a microbiologist with an MBA, said when it comes to gathering information, “I really can't hold a candle to the hedge funds. They're able to do things that are unethical.”

Delafield Hambrecht makes it a policy not to pay doctors for information, Pham said. But she talks to hedge-fund managers who do it all the time, she said, citing a recent example involving Seattle-based Cell Therapeutics.

Research on Cell Therapeutics' experimental lung-cancer drug was nearing completion early this year. Dr.

Word spread quickly. In Seattle, Pham at Delafield Hambrecht got calls from hedge-fund managers to see if she had dug up anything on the Cell Therapeutics study. One hedge-fund manager told her he already had called 20 medical centers in Eastern Europe, Pham said.

In the end, Langer's warning was right. On March 7, Cell Therapeutics announced its drug failed to prolong lives. Its stock plunged 48 percent that day. Any hedge fund shorting the stock after talking to Langer would have scored big.

Langer said he didn't know what his Wall Street contacts did with his information. “They don't tell me, and frankly I don't want to know,” he said.

ENTER THE MIDDLEMAN

A new industry rounds up influential doctors who'll talk to investors — for a fee.

Hedge funds and mutual funds don't have to track down doctors on their own. There is now an industry built around paying influential doctors — referred to as “thought leaders” — to talk to them.

The pioneer in this field is Mark Gerson, who co-founded Gerson Lehrman Group in 1998 when he was 29 and attending Yale Law School. By then, he had already written a book on neoconservatism and was the subject of a flattering George Will column about Gerson's brief experience teaching at an inner-city Catholic high school.

Gerson used his networking skills to start Gerson Lehrman's “Council of Advisors” and now says its numbers have climbed to 60,000 physicians. Advisers agree to talk to hedge funds and mutual funds for an hourly fee, usually around \$300 to \$500 an hour.

Some doctors charge more. Dr. Celestia Higano, an oncologist at the University of Washington, said she raised her fee to \$1,000 an hour to discourage investors from calling. After that, Gerson Lehrman sent her assistant an e-mail, urging that she lower her rate.

“At this rate Dr. Higano would become a reserved advisor, and therefore would be used more sparingly since her rate is above \$500/hr,” the e-mail said.

Gerson told The Times he charges investors a basic rate of \$60,000 for six months of access to the firm's doctors. But hedge funds pay Gerson Lehrman up to \$1 million a year for its most premium service, he said.

Brokerage firms also serve as matchmakers for their best clients by setting up conference calls with medical researchers. Typically, brokerage firms invite 10 to 40 hedge-fund or mutual-fund clients to participate in these calls, said Fariba Ghodsian, an analyst at a hedge fund in Los Angeles. Small investors don't have access.

In an interview, Gerson said his firm reminds doctors to honor their confidentiality contracts. He said he has never heard of doctors leaking confidential information through his service. Gerson said he does not believe they would do so because the doctors and his clients want to protect their reputations.

“Nobody that we've ever met wants

to succeed financially in a way that would not honor their reputation,” he said.

TACTICS DEFENDED

Some involved say they're doing nothing wrong and are, in fact, performing a useful service to advance “promising therapies.”

Defenders of the practice contend that most conversations with medical researchers are not efforts to ferret out secrets about clinical trials. Hedge funds and other investors said they often are collecting information on how doctors will use drugs in the market.

Albert Sebag, CEO of Clinical Advisors in New York, another firm that hooks up doctors and Wall Street firms, said physicians don't have any inside information from the companies.

“They just put patients on the study. They don't know what the patients are necessarily getting. The data is typically analyzed by a third party,” Sebag said.

Many studies are “blinded,” meaning that patients and in some cases doctors don't know who is getting the experimental drugs or something else, such as a placebo.

But hedge-fund managers said it often is possible to find out from doctors how a study is progressing, even when it is “blinded.” That's because drugs can have obvious side effects that patients receiving a placebo won't get.

ImClone's Erbitux for colon cancer, for example, causes rashes. During ongoing studies, said Garren, the hedge-fund manager, he took advantage of that, calling cancer physicians who had experience with the drug.

Garren said he paid many of the physicians to talk and asked the same question: How many patients with rashes had their tumors shrink?

After talking to doctors at a few medical centers that enrolled the most patients in the study, he came away believing the drug would be a hit. However, Garren said he didn't act on the information until after the Erbitux results were publicly known.

Sometimes the Wall Street firms can hit the jackpot, getting details from a doctor who is not “blinded” at all and has access to complete safety data.

That happened in February, when clients of the brokerage firm Fulcrum Global Partners were invited on a conference call with two doctors involved in research for Encysive Pharmaceuticals, a small Houston biotech.

One of the doctors, Harold Palevsky of the University of Pennsylvania, sat on the study's data-safety-monitoring board, a group meant to protect patients. Board members aren't “blinded” and get complete safety data while a study is in progress, because their job is to shut down a study if patients start to suffer from dangerous side effects.

Members of data-safety-monitoring boards are sworn to secrecy to protect the integrity of the research. Yet, according to notes of the call later released by a Fulcrum analyst, Palevsky offered investors new and valuable information.

Please see > LEAKS, A8

< Continued from previous page

ing about before. When the doctor hangs up, he thinks he's had a nice conversation about the weather or the Mariners.”

HEDGE FUNDS EXPLODE

A rapidly growing form of investment ramps up the pressure to gain inside information on drug research.

Powerful economic forces are driving the trend to pay for secret information. Years of a raging bull market were good to mutual funds. But when the good times on Wall Street ended in 2000, money began pouring into hedge funds in search of better returns.

Though barely a blip on Wall Street 15 years ago when they collectively managed less than \$40 billion, hedge funds now manage close to \$1 trillion — doubling in size in just the past five years, according to Chicago-based Hedge Fund Research.

Unlike mutual funds, hedge funds aren't regulated and can take big risks, such as buying a stock with borrowed money or shorting a stock, a way to profit when its price falls. Hedge funds aren't satisfied keeping pace with an up-and-down market. They expect to make profits even in bad times and have a powerful incentive to do so: Fund managers get to pocket 20 percent of their funds' profits.

With such big payoffs for fund managers, the number of new funds has exploded, intensifying competition.

“As soon as money gets involved, it attracts people, and people go to greater and greater lengths to get an edge on their competition,” said Joe Edelman, portfolio manager of Perceptive Life Sciences Master Fund, a \$600 million biotech hedge fund in New York.

The way to get an edge on Wall Street is with better information, Edelman said.

“If everybody has the same scoop, it's not a scoop,” he said. “People will go to great lengths and throw a lot of money around to outdo the next person.”

The need for scoops has driven Wall Street firms to pay medical researchers to divulge secrets, said David Miller, who digs up information for his Seattle-based newsletter Biotech Monthly, but refuses to pay doctors.

“It's becoming standard practice” for hedge funds and brokerage firms to pay doctors, Miller said. “A couple years ago, this is something you would have seen as unusual. Today it's not.”

Miller said the practice taints the biotech industry, allowing some with inside information to get rich at the expense of individual investors.

“What this has to do with is people who are so greedy in the market that they are willing to break all the rules to make money,” Miller said.

Hedge funds have become some of the most active traders on Wall Street, accounting for as much as half of the trading volume in the New York Stock Exchange, according to Credit Suisse First Boston. Brokerage houses now scramble to woo hedge funds and their massive trading business. Not only do these funds buy and sell enormous amounts of stock, they do more



Selling Drug Secrets

“There’s no end to greed, and doctors aren’t immune to it.”

DR. SCOTT RAMSEY, a health economist at Fred Hutchinson Cancer Research Center

< Leaks

FROM A7

Encysive was testing a drug called Thelin for pulmonary hypertension, a rare and potentially fatal disorder of the blood vessels in the lungs. Earlier studies raised concerns that Thelin might be linked to serious bleeding or that it could damage the liver.

But, according to the analyst’s notes, Palevsky assured investors that “the overall incidence of major bleeding events is rather low” across several Thelin trials.

Five days later, Feb. 14, Encysive announced the study had succeeded. Patients on the drug had no serious bleeding episodes.

That day, Encysive’s stock surged 13 percent on the busiest trading volume in its history. Fulcrum analyst Patrick Flanigan boasted in a report that the results “are consistent with statements expressed by our physician consultants on a conference call we hosted last week.”

Uzi Roshia, compliance director at Fulcrum, said the firm did nothing wrong.

“It was the doctors who had agreements with the company,” he said. “It was their responsibility to make sure the conference call didn’t contradict their confidentiality agreement.”

Palevsky said he didn’t reveal anything confidential, even though Fulcrum’s report said Palevsky talked about information that had not yet been published.

“I am not responsible for what they say,” Palevsky said “I spoke about data which had previously been published. Period.”

Critics say drug-safety monitors such as Palevsky, with access to patient results, shouldn’t talk to anyone, let alone Wall Street, about the research.

Palevsky defended his decision to talk to Fulcrum: “Why should I have not?”

Because talking about what you know as a safety monitor, said Penn bioethicist Caplan, is “about as big a no-no as you’re going to get.”

BREAKING THE LAW?

Courts have ruled that analysts can’t coax someone to divulge company secrets.

Wall Street analysts argue they’re doing nothing wrong. The U.S. Supreme Court ruled in 1983 that because analysts don’t owe allegiance to the companies they research, they are free to gather valuable information and pass it on to their customers. Analysts also are free to collect tidbits of data that, when pieced together, may amount to valuable information not available to the public.

However, the court also has ruled that analysts can’t coax someone to divulge company secrets, which it called “misappropriating” nonpublic information.

John Coffee, an insider-trading expert and law professor at Columbia University, said that it is clearly illegal to trade stock based on information obtained by paying doctors to leak confidential material about research they are doing for drug companies. Paying 20 doctors to answer the same question about the same drug trial is not the same as collecting tidbits of data, Coffee said.

Misappropriating company secrets violates federal securities laws. And the practice of selling secrets is illegal for all parties involved, including doctors, hedge funds and research analysts, legal experts say.

The Securities and Exchange Commission, told of The Times’ findings, said it had no comment.

Newkirk, who left his post as the SEC’s associate enforcement director for a private law practice late last year, said he had not known about medical researchers selling confidential information to investors until The Seattle Times told him about it.

He knew of no SEC investigation of the practice. However, he said the examples uncovered by The Times were the kind of insider-trading cases he would have pursued at the SEC and the kind of cases the agency would pursue now if it knew about them.

Newkirk said the SEC should investigate the practice of selling drug secrets for a simple reason:

“Because people ought to know better. People in the securities industry ought to know better than to do things like that. Doctors who’ve accepted confidentiality agreements — they are the kind of educated people who ought to keep their word.”

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JOHN LOK / THE SEATTLE TIMES

Dr. Scott Ramsey, a health economist at Fred Hutchinson Cancer Research Center, says he has refused offers to talk to investors about drug research. But some doctors, he says, are tempted to accept such offers — and the accompanying fees — to bolster their incomes.

Some doctors see ethical pitfall in actions that others defend

BY DAVID HEATH AND LUKE TIMMERMAN
Seattle Times staff reporters

Doctors offer many reasons for talking about their ongoing drug research to investment firms.

Dr. Corey Langer, a lung-cancer expert at Fox Chase Cancer Center in Philadelphia, said he grew so tired of being ambushed at medical conferences by stock analysts and hedge-fund managers that he started charging them.

“My time is expensive,” he said. “I’d rather get paid for giving my time.”

Dr. Thomas Friberg, an ophthalmologist at the University of Pittsburgh, said he does it for the intellectual exchange with analysts, many of whom are doctors themselves and know more about the experimental drugs than his colleagues.

“It’s sort of like having an ‘A’ student in your class,” he said.

Whatever reason doctors give, legal and medical experts say talking about ongoing research violates confidentiality contracts, and taking money from Wall Street is another breach of ethics in a profession that already has developed a permissive attitude about taking gifts and fees from private industry.

Wall Street has found a way to take advantage of the culture, offering doctors typically \$300 to \$500 an hour — but up to \$1,000 an hour — to field investors’ questions. The number of U.S. doctors who take money from Wall Street firms has skyrocketed from fewer than 1,000 a decade ago to 75,000 this year, according to The Journal of the American Medical Association.

Many doctors testing experimental drugs refuse to talk to Wall Street investors about ongoing research. But those who do talk downplay the significance of the information they give, according to interviews with two dozen of them.

Some said they just discussed medical results already publicly known. However, analysts often tout in their reports that they got new information from the research doctors.

Others said the tidbits they shared weren’t really valuable.

Langer, for instance, said he believes he obeys his confidentiality agreement because he doesn’t divulge full results of drug tests, just personal impressions.

But Pam Sayad, a San Francisco employment lawyer who has reviewed two confidentiality breaches for a biotech company, said doctors have no leeway — results and observations from a drug trial are proprietary until full public release.

According to a typical agreement, doctors “shall not disclose any confidential information to any third party” and must tell the company in writing of “any known misappropriation.”

The danger of doctors thinking they can take Wall Street’s money while not divulging important in-



“My time is expensive. I’d rather get paid for giving my time.”

DR. COREY LANGER
Lung-cancer expert,
Fox Chase Cancer Center



“[The practice is] outrageous and completely unethical.”

DR. DRUMMOND RENNIE
Deputy editor, The Journal
of the American Medical
Association

formation can be seen in the case of Dr. Casey Cunningham, a cancer specialist in Dallas.

Cunningham, who has talked to Wall Street investors for six years, said he didn’t understand at first why they asked him questions that seemed meaningless to him as a scientist — such as whether he had enrolled the first patient in a drug-testing trial. Despite his confidentiality contract, he answered anyway.

Now, he said, he knows that Wall Street firms can use such information to gauge whether a company is on schedule in drug development. He said he won’t give information that moves the stock market.

“That [investment] world is foreign to most of these doctors,” he said. “That makes them vulnerable.”

Sayad said doctors sometimes don’t read the agreements before signing. Others ignore the agreements because drug companies do not enforce them. The companies, she said, don’t want to risk upsetting these leading doctors because companies need them to develop their drugs and advise colleagues to prescribe them.

Dr. Scott Ramsey, a health economist at the Fred Hutchinson Cancer Research Center in Seattle, said he has turned down offers to talk about drug research to Wall Street firms. He said many doctors, however, are tempted by the offers because they think they aren’t earning enough.

Cancer-doctor salaries, for example, typically range from \$223,000

to \$372,000 a year, according to Modern Healthcare, a trade journal. Doctors at academic medical centers often make about half as much as those in private practice.

“There’s no end to greed, and doctors aren’t immune to it,” Ramsey said.

Dr. Drummond Rennie, deputy editor of The Journal of the American Medical Association, has written extensively about the growing commercial influence on medicine. Doctors who think they can give their own impressions about ongoing research are in denial and deep down know it’s wrong, he said. The practice, Rennie said, is “outrageous and completely unethical.”

Rennie described the sense of entitlement that can corrupt doctors. They leave medical school saddled with debt and working long hours at wages that are relatively low for doctors. Early in their careers, drug companies shower them with gifts such as stethoscopes and textbooks.

“That only has to happen a few times before you realize the world thinks you’re incredibly clever,” Rennie said. “You’re entitled. After a time, you just can’t imagine paying for a lot of things that you should pay for.”

Some may model themselves after older doctors living lavish lifestyles and yearn to catch up as they get married, buy homes and raise families, he said.

Once physicians become established, drug companies commonly pay them to give “medical education” lectures to colleagues, for say, \$500 or \$1,000. The drug company prepares the speech and accompanying slide show.

“In no time at all, your income has suddenly gone up \$50,000 to \$100,000 for doing something that isn’t too arduous, and on which you begin to depend,” Rennie said.

Dr. Jerome Kassirer, former editor of the prestigious New England Journal of Medicine, said doctors might rationalize taking extra money from investment firms, partly because they already take gifts and money from drug companies.

The pharmaceutical industry spends \$12 billion a year on gifts and payments to doctors, according to the inspector general of the U.S. Department of Health and Human Services. It’s not unusual for an influential doctor to pocket an extra \$100,000 a year from outside sources, said Mike Broxterman, past president of the National Association of Physician Recruiters, based in Altamonte Springs, Fla.

“It’s become part of the fabric of the profession,” Kassirer said. “Just about everybody in the profession is on the take.”

Langer, the lung-cancer expert in Philadelphia, now says that, after some thought, he isn’t sure his reasons for taking Wall Street’s money were good ones, noting that his first responsibility is to his patients.

“Perhaps I should stop,” he said.

Sellers, buyers of secrets risk being prosecuted

Paying doctors to divulge secrets capable of influencing stock prices violates federal insider-trading laws, legal experts say.

Even though research doctors typically aren’t employed by drug companies, they have company secrets that they agree not to divulge. Courts have ruled that if someone with company secrets sells them, he or she is guilty of “misappropriating” information and can be prosecuted under insider-trading laws.

Likewise, anyone who buys the information for the purposes of trading stock also can be prosecuted.

The Securities and Exchange Commission typically investigates insider-trading claims, but the SEC has the power to take only civil actions. The Justice Department decides whether to file criminal charges. Thomas Newkirk, a former SEC enforcement officer, said criminal charges are considered if the violation is intentional.

State attorneys general, who enforce state securities laws, could also take action against doctors who sell secrets or investors who buy them.

Drug companies can sue doctors for breaking their confidentiality agreements. The companies also can sue hedge funds or brokerage firms that pay or coax the doctors to break their vows.

However, this happens rarely, if ever, because companies rely on doctors to endorse their research and prescribe their drugs, an industry expert said.

“When you have a relation between a company and a clinical trialist, that’s an important relationship. I can understand why companies would be reluctant to engage in litigation with that person,” said Charles Lucas, general counsel of the Biotechnology Industry Organization, a Washington, D.C., trade group for drug-development companies.

Pam Sayad, a San Francisco lawyer who advises drug companies when doctors violate confidentiality agreements, agreed. Her advice to companies:

“Don’t run into court to file a lawsuit. Talk to the doctor and tell the doctor about the obligations. You tell them, ‘You’ve been in breach, and you better keep your mouth shut.’”

—David Heath