

Health-care patents and interests of patients

Editor – I wish to congratulate Anatole Krattiger & Richard T. Mahoney on their editorial in the May issue of the Bulletin.¹ As they point out, “Developing health technologies for the world’s poor people increasingly requires the wise management of intellectual property (IP), and the papers in this issue all treat IP as a strategic asset.” Patent protection is intended to promote research and development and to act as a stimulus to progress in science and the useful arts. New technologies and the translation of research discoveries into clinical medicine are essential for improvements in patient care. The increasing commercialization of medical discoveries, however, may hamper the dissemination of new knowledge and the ability of physicians and patients to benefit from applications of this knowledge. All types of patents raise ethical issues and may create conflicts of interest for physicians who contribute to the development of new products through research. Most current therapeutics are based on private ownership of pharmaceutical discoveries, even if the origin of those therapies is based on publicly funded university-based research.

Historically, physicians have taught and shared medical information without regarding this knowledge as trade secrets to be protected from others. The commercial potential of medical discoveries may motivate physicians to increase their own incomes in ways that may jeopardize the care of patients. The daunting task of all stakeholders is the continued development of patent policies that fairly balance the interests of competing interests of generic and brand-name companies.

As regards physicians’ relationships with industry, manufacturers of pharmaceuticals and medical devices assist physicians in the pursuit of their educational goals and objectives through financial support of various medical, research and educational programmes. Industrial development of products is important to continuing improvement in health care. Corporations are primarily responsible to their stockholders, while physicians are primarily responsible to their patients, so the goals of corporations may conflict with physicians’ duties to their patients. The public expects physicians to avoid conflicts of interest in decisions about patient care: such decisions usually involve the direct treatment of patients and may also involve physician participation in purchasing decisions by medical organizations, such as hospitals and group practices, to which physicians owe fiduciary responsibility. Different segments of society stand to benefit in different ways from health-care providers’ actions, and finding a proper balance can be challenging. Health-care providers have a responsibility not only to their individual patients but also to society as a whole.

In the United States, the Orphan Drug Act has proven to be a successful marriage of government and pharmaceutical companies. The government provides tax incentives and guarantees seven years of exclusivity (after approval by the Federal Drug Agency) to encourage drug makers to develop products to treat conditions that affect fewer than 200 000 people and are generally unprofitable. On the whole, the result has been positive, despite abuses. The Orphan Drug Act has been copied, with changes, by Australia, the European Union, Japan and other countries. In the European Union, unlike in the United States, if a drug is “extraordinarily profitable” it

loses its orphan drug status after five years. Nonetheless, whether one follows the United States version or some other, the basic concept has been successful in bringing needed drugs to market. Perhaps something comparable to this — an international orphan drug act — could be agreed upon; perhaps governments could subsidize special research on the current WHO list of essential drugs; and perhaps companies could agree to fund joint research for drugs that would not be covered by patents and would be produced and distributed at cost. ■

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1. Krattiger A, Mahoney R.T. Intellectual property and public health. *Bull World Health Organ* 2006;84:340.

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