

New law against corruption in healthcare - What should be taken into consideration by pharmaceutical sector and doctors in the future

The practices of hospitals/doctors, e.g. "sponsoring" or "referral bonuses" require a critical review according to the new corruption law.

With the adoption of the Law, two new criminal offences of active and passive bribery in healthcare (sec. 299a and 299b) have been added to the German Criminal Code (Strafgesetzbuch - StGB). These new regulations shall primarily prohibit the activities of the pharmaceutical sector (e.g. discounts and kickbacks for prescribing medicines as well as the visible or hidden "assignment bonuses").

New Criminal Offences

On June 4, 2016 a new law against corruption in healthcare was ratified. Sec. 299a and 299b have been added to the German Criminal Code (Strafgesetzbuch - StGB). In accordance with sec. 299a, corrupt behavior of doctors and practitioners of other medical/healthcare professions is now subject to sanctions in case they demand or accept advantages for prescribing medicines or non-physician therapies or medical products or assigning patients or study material. According to sec. 299b StGB, the pharmaceutical sector as well as the medical device manufacturers can also be punished in case they offer, promise or grant such advantages. The criminal offences shall apply to all medical professions that require a government-regulated education (e.g. nurses, midwives and speech therapists). It is further remarkable that the complaint requirement for bribery in healthcare has been waived.

The Background of the New Regulation

The new Law is the result of a decision of the German Federal Court of Justice dated May 29, 2012 in which the Grand Criminal Panel refuted the public-official status of practicing doctors and also specified that practicing doctors are not associated persons for business (Beauftragte) within the meaning of sec. 299 StGB. This meant that inadmissible payments to practicing doctors were never defined as bribery, even if they influenced the medical conduct, although hospital doctors were covered by general provisions against corruption. This criminal preferential treatment of the practicing doctors was considered unjustified and therefore had to be abolished.

Changes and Challenges

In the future, the common practices with practicing doctors in form of consultancy agreements or remunerated lectures ("sponsoring") as well as "referral bonuses" from hospitals and doctors should be reviewed in a critical way. The rebates on the purchase of medicines or medical products intended for direct use by doctors or practitioners of other medical/healthcare professions (e.g. dental implants or prostheses) should be checked under the new law as they might be inadmissible.

Practical Advise

Against the background of the impending high fines and imprisonments of up to three years – and even up to five years in serious cases - pharmaceutical companies, doctors and practitioners of other medical/healthcare professions as well as other companies in the healthcare sector should critically assess their corporate practices regarding the legal validity and admissibility and change any impermissible behavior under the new legal framework, and, if necessary, oblige their business partners to implement the new regulations as well.

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