

Martine,

I am sending you all of the copies of information that I received from Omnicare last week in association with the ongoing rebate dilemma. There have been a couple of new twists added.

*The amount of \$702,761.30 that was brought to our attention Omnicare for purchases made outside of the JJHCS contract was incorrect. This amount was actually the amount of the 1% overlay for 1998-1999. The \$300,000 educational funding amount was generated for the 1% overlay from 1997-1998, which Omnicare figured to be \$339,852.00. These amounts were generated based on an oral agreement between Denny Sherrill and Dan Maloney, in essence because, Omnicare's contract was missing the page that described performance tiers needed to qualify for rebates.

*The amount requested by Omnicare for rebates lost from ordering outside the contract were as follows and will be included in my mailings to you. (Please refer this information to Bonnie Stocker and Sue Griffin).

Rebates Lost

3rd Quarter 1997	\$ 75,106.11
4th Quarter 1997	\$ 23,111.57
1st Quarter 1998	\$ 23,343.77
2nd Quarter 1998	\$103,114.93
3rd Quarter 1998	\$ 86,613.10
4th Quarter 1998	\$ 49,329.01
Total	\$360,618.49

Dave,

I would like to explain to you how I am planning to solve the rebate issue with Omnicare.

As you our aware Omnicare initially came to us with two figures:

*The first figure was \$300,000 for the 1% overlay which we felt obligated to pay based on the contract revisions (market components and revision of the dacon issue).

*The second figure was \$702,761.30 which was explained to us as rebates that should have been credited to

Omnicare from purchases made outside the JJHCS contract. This number was given to me by both Tim Bien and

Dan Maloney. We specifically asked HCS (Bonnie Stocker) to look into the figure for verification. The figure she

came up with was around \$90,000 of rebates on strategic products purchased outside the JJHCS contract.

After our meeting with Omnicare last week, I was taken back to Dan's office where a third figure of \$339,000 was given to me with an explanation of the \$300,000 payment made was for the 1% overlay in 97-98. The \$702,000 was for the 1% overlay in 98-99, and the new \$339,000 figure was for purchases made off the JJHCS contract. Dan apologized for the fact that he led us on a "wild goose chase" in trying to verify \$700,000 worth of rebates generated from purchases made outside JJHCS contract. This supports the notion that apparently Dan and Tim don't understand what monies are associated with rebates or overlays, they just know that they need money.

Based on the current scrutiny that is now taking place with our industry, and having no other form of verification outside of a verbal commitment from Denny Sherrill that Omnicare will be taken care of, I do not believe we can support the payment of \$700,000 on a 1% overlay that was based on the specific qualifiers on Exhibit D of the contract. (A page that was missing from Omnicare's contract).

My recommendations are as follows:

- 1.) Complete the \$300,000 funding program and send a check to Omnicare as soon as possible. This will complete the 1% overlay for 97-98, and the way it was initially served up to us, should have completed the overlay for the entire period in question.
- 2.) Deny any claims for an additional \$700,000 for rebates on 98-99 supported by the inability to reach contract parameters as well as complicating the process further by trying to incorporate a way in which a payment solution could be worked out and thus putting us in "harm's way" for a possible fraud and abuse lawsuit.
- 3.) Verify the remaining \$339,000 claim and if the numbers support Omnicare rebate purchases outside the HCS contract, we should pay them.

I will follow up with Bonnie, Sue, and Martine on the verification of the \$339,000. I will also draft the specifics for your review in explaining to Omnicare why we will not pay the \$700,000.

Bruce Cummins

Dave,

Partially based on our conversation this morning, here are the components I plan on addressing with either Dan Maloney or Tim Bien regarding the 1% overlay for 1998-1999. Based on Exhibit D of the previous contract covering the period between April 1, 1999 - April 30, 1999

"The Strategic Brand Performance Rebate shall be earned if and only if all of the following criteria have been fulfilled"

Risperdal	Tier 3
Floxin	Tier 1
Ultram	Tier 2
Duragesic	Tier 2

The Performance Tiers for 1997-98 were as follows

	1stQ - 98	4Q97	3Q97	2Q97
Risperdal	Tier 1	Tier 1	Tier 1	Tier 1
Duragesic	Tier 2	Tier 1	Tier 0	Tier 0
Ultram	Tier 0	Tier 3	Tier 2	Tier 1
Floxin	Tier 1	Tier 1	Tier 1	Tier 0

RISPERDAL TIER NOT ACHIEVED.

The Performance Tiers for 1998-99 were as follows:

	1stQ - 99	4Q98	3Q98	2Q97
Risperdal	Tier 2	Tier 2	Tier 0	Tier 0
Duragesic	Tier 1	Tier 1	Tier 1	Tier 1
Ultram	Tier 0	Tier 2	Tier 2	Tier 2
Floxin	Tier 0	Tier 0	Tier 0	Tier 0

RISPERDAL TIER NOT ACHIEVED

Points considered that will be discussed:

RELATIONSHIP: A partnership is mutually beneficial. We understand the financial problems that are facing Omnicare. We have worked in the following areas to help drive initiatives as well as strengthening our partnership:

- * Spending over 1 million dollars on initiatives supporting Risperdal, Duragesic, and Pain Programs.
- * Looking into issues surrounding purchases may outside of the HCS contract accounting for \$360,000.
- * Supporting Manager's Conference two years in a row.
- * Supporting programs that help overcome physicians resistance to Risperdal (\$300,000).

Based on the continuing scrutiny regarding abuse in our industry, we must follow contractual issues to the letter. No overlay's will be paid for 97-98 or 98-99. We will review purchases may outside the JJHCS contract to see if anything can be done for the periods from 2nd quarter 1997 through present.

Dave,

Here are the summary of events, pertaining to the conversations I've had with both Dan Maloney, Director of Purchasing and Tim Bien, Senior Vice President of Professional Services and Purchasing. Please feel free to pass my comments on.

On Wednesday, September 22nd, I contacted Dan Maloney and told him I wanted to address three issues. I started out by saying that the Omnicare purchases made outside of the JJHCS contract were still being evaluated. I told Dan it might be toward the end of the week or beginning of next week before I have any additional information. (Martine Grant had left me a message on Thursday, stating that the figures that she and Bonnie Stocker are arriving at are around \$60,000, not \$360,000 which is what Omnicare is asking for.)

I told Dan that the contract for the educational regional seminars had been completed and could be sent out at any time for signatures. After the signed contract had been received he would receive the check for \$300,000.

I then expanded the conversation to include our relationship and how not only were we doing the things listed above, but had spent over 1 million dollars in resources in helping to drive the Risperdal and Levaquin Initiatives. I also talked about the funding for the manager's meetings as well. I stated that we knew Omnicare was having a rough financial year, but based on the

components of the contract there would be no 1% overlay paid for 98-99. Dan became rather defensive, stating that this was not right and that he wanted to contact Denny Sherrill and make him "squirm" based on Denny's commitment to take care of Omnicare even though they did not receive Exhibit D of the contract. Dan continued to suggest that since Exhibit D was never sent to him, Omnicare had no knowledge of having to achieve any tiers for the overlay. The only binding nature of the agreement was Danny's verbal commitment. I told Dan that whether or not he received the contract was irrelevant. What mattered was that legal would interpret the contract that was in HCS's hands and would not pay the overlay. Dan became angry, threatening the relationship, and told me he wanted nothing more to do with it. At this point he told me to carry on any additional conversations with Tim Bien. I told Dan I was in Chicago and if Tim needed to contact me, he should try my mobile phone. Dan said he was going to prepare a package of information for Tim for possible legal action. We signed off at that point.

When I returned home on Thursday, I came to find out that Tim had been trying to reach me at my office and that Dan had forgotten my mobile number so that I couldn't be reached by telephone. I contacted Donna Fairbanks to set up a time to talk with Tim. Tim was out of the office until Monday so I told Donna to have Tim call me from where he was at or that I would reach him on Monday. I had left a message for Gary Erwin based on a message that Tim had left him requesting two things for our Oct. 4th meeting at OBI on Procrit and the Pre-dialysis market. Tim wanted \$200,000 for a pilot program and a further discount on Procrit. I told Gary that this meeting was neither the time nor the place to talk about discounts and if they wanted to look at \$200,000 for a pilot program, we would need to know how the money was going to be spent.

I received a call in my office from Tim at around 10:45 A:M on Thursday, September 23rd. He was with Joel Gemunder and Gary Erwin in Wisconsin. Tim started by saying there would be no talk about Procrit discounts at our meeting with OBI, that he would send me a breakdown of how the \$200,000 would be used to pilot the program, and that he didn't think I would be going to jail (a comment that I can only guess was delivered to him by Dan Maloney, when I had made a flippant remark stating that I wasn't going to go to jail for Dan, Omnicare, or for that matter J&J). Tim went on to say that our relationship was in serious jeopardy, that he was angry and that he wanted his money. I told Tim that I didn't expect him to be happy, but at the same time no 1% overlay would be paid because the contractual components were not met by Omnicare. Tim stated again, that the only thing that mattered was the verbal commitment and the fact that a page was missing from the contract. I told Tim, it had no bearing and that we were not going to pay the overlay. Tim (as if not hearing a word I said) says, I will jump on a plane to New Jersey and speak with David Norton, our legal department, and whom ever else needed to get him his money. I told Tim, that it wasn't his money and that it wouldn't make a difference.

Tim then decided to work the relationship angle, and stated this was going to have an impact on our initiatives, he talked about all the efforts that they had made in fueling the Risperdal and Levaquin Initiatives, to which I replied that we had spent over \$1 million dollars in resources to help them as well. He then threaten to "pull the plug" on the Procrit Initiative which in his words will generate "Tens of Millions of Dollars" for J&J. (Tim still has no concept of the legalities surrounding Procrit and even if he took his business to Amgen, OBI would still get paid, but I didn't bring that up.) Tim told me that he would continue on with the October 4th meeting, with the assumption that the overlay would be paid. Again I told him, it was not possible. He ended the conversation by stating the legal issue was not a problem, and that if Johnson and Johnson really wanted to continue the relationship, they would find a way to fix it, either by discounts, etc..) He told me that he expected us to find a way to make it right. I again told him that based on the components of the contract, there was no way we would be paying an overlay. He told me that I knew his view and I told him he knew mine and we said good-by.

Martine,

I felt better sending this E- Mail rather than faxing it to your hotel. Tim Bien's (Sr. Vice President of Professional Services and Purchasing) comments are as follows:

For Discussion and Settlement Purposes

- *The Agreement as signed by Omnicare does not contain the later-delivered Exhibit D.
- *The Agreement as signed by Omnicare contains pages consecutively numbered through page 38. Exhibit C begins on page 30 and Exhibit E begins on page 36. Exhibit D must be on pages numbered between 31 and 35.
- *Omnicare was told that pages 34 ad 35 of the Agreement signed by it were Exhibit D.
- *The document given to us after the fact purporting to the Exhibit D has no page numbers.
- *The Agreement is sloppily drafted with a variety of technical defects, mislabeling and incomplete items; it is not surprising that pages 34 and 35 would amount to Exhibit D even if not labeled as such.
- *The Agreement by its terms and absent Exhibit D provides a basis for calculating the 1% rebate.
- *Legal principals of interpretation require that ambiguous language be construed against the draftsman of the contract. J & J drafted the contract.
- *For each of Risperdal, Floxin, Ultram and Duragesic, Omnicare had in place an approved Active Intervention or Appropriate Use Program as required by the Agreement.
- *In December 1999 we were first told of the existence of quantitative performance measures and not simply the requirement that an AIP or AUP be in place.
- *The volume requirements in the different Exhibit D were much higher than we would have agreed to and certainly higher than the level where we would have booked revenue which we did.

The agreement provision that needs to be removed from the "Initiative Partnership" is on page 4 section 3 and states:

"Omnicare shall prepare and submit a report to J\$JHCS outlining Omnicare's activities and expenditures pursuant to this Agreement after six months and again at the expiration of this Agreement."

Dave,

I wanted to keep you updated on the initiatives that we are currently trying to complete with Omnicare. I wanted to also comment on the nice job Martine Grant has done, especially as it pertains to the rebates Omnicare is requesting from purchases made outside the JJHCS contract.

1.) OMNICARE EDUCATIONAL INITIATIVE. This initiative was signed by Mark Lehman, Director of Clinical Services, and Myself on Wednesday, October 10th. I have Fed-Exed all copies to Martine for her signature. Once this is completed, I will submit an original copy to Tim Bien. The \$300,000 check will be sent within the next few days to Tim Bien's attention.
Project - COMPLETED

2.) PURCHASES MADE OUTSIDE HCS CONTRACT - As you are aware, there was a great deal of discrepancy on rebates that Omnicare felt they deserved, and the reality of the situation from an HCS perspective. I say reality because due to Martine Grant, Bonnie Stocker, and Sue Griffith's attention to detail we were able to counter many of the erroneous claims for rebate made by Omnicare. There really was two major issues that Omnicare initially didn't grasp. The first was a reduction of rebates by 2% (GPO administration fees) that Omnicare had failed to reduce there calculations by. Dan had no problem with this, and in fact told me, "I'll get the 2% from McKesson". That issue was then laid to rest. The other issue was "best price" and during the 4Q of 98 and the 1Q of 99, Omnicare was at best price with Risperdal, Levaquin, and Duragesic. Dan was aware of best price issues during the first quarter of 99, but didn't believe that to be the case in the 4th quarter of 98. Pam Rubble called me today (Dan's assistant) to tell me that indeed there figures supported a "best price" issue and would not press the claims in that area. The only other issue that remains on the table is some discrepancy in sales volume between HCS and Omnicare. Matine is currently looking into this matter and I don't believe this will be a major issue. I should have this put to rest by the end of next week. I wanted to commend Martine for the work that she did on this project. By putting together the information the way that she did, my presentation to Dan was irrefutable. There was no recourse that Dan could take with the facts that Martine had put together. In defense of her efforts, and the efforts of the HCS team (Bonnie and Sue), the original rebate asked for by Omnicare of \$339,852.00 has been reduced and effectively communicated to Omnicare based on the evidence, to be at \$66,495.76. I have every reason to believe that Omnicare will no longer challenge this figure, once the sales dollar discrepancy has been alleviated. Again, my hats off to Martine and the HCS team!

3.) REBATE ISSUES 98-99. I have "floated" the physican's data balloon to Tim. Although Tim still feels that legally he is in the right and believes no other avenue should be addressed outside of paying him the \$700,000, he hasn't shut the door on this proposal.