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life sciences

CLIENT ALERT

Taking Stock of the Recent Flurry of Articles Mining Open Payments Data

In the past few months, we've seen a series of in-depth articles analyzing Open Payments data. First launched in 2013, the Open Payments database¹ is a public, searchable website that discloses payments that pharmaceutical and medical device companies have made to healthcare professionals. Open Payments brings to life the "Physician Payments Sunshine Act," which was signed into law in 2010, and requires companies to report these payments and other transfers of value, such as meals provided to doctors, to the government annually to ultimately be published.

While media outlets and researchers have long been interested in exposing conflicts of interest in the healthcare space, there's been a flurry of articles published in prominent medical journals and news agencies analyzing Open Payments data specifically.

These recent articles each have their own distinct targets, but they all focus on financial conflicts of interest between the life sciences industry and healthcare professionals, and all rely on Open Payments for support. Most are aimed at allegedly undisclosed financial conflicts among authors or participants in medical journals, diagnostic guides, and medical review panels.

Below are five examples of recent Open Payments-focused articles:

1. "Ten Doctors on FDA Panel Reviewing Abbott Heart Device Had Financial Ties With Company" – published on *NBC News* on April 8, 2024.²

> Looked at Open Payments data associated with members of a recent Food and Drug Administration (FDA) advisory panel assessing the TriClip cardiac device made by Abbott. The authors found that the FDA did not disclose that most of the committee members received payments from Abbott or had conducted Abbott-funded research per the Open Payments database. The panel voted almost unanimously that the benefits of the device outweigh its risks. The authors noted that the committee member associated with the most money received from Abbott actually cast one of the votes against the device on effectiveness and the sole vote against the device on the question of its risks versus benefits.

2. "Industry Payments to US Physicians by Specialty and Product Type" – published online in *JAMA* on March 28, 2024.³

> Conducted a broad analysis of Open Payments data over the past ten years looking at specialties and products most associated with industry payments. The authors found that the top three specialties to receive industry payments over the past decade were (1) orthopedic surgeons; (2) neurologists and psychiatrists; and (3) cardiologists. The lowest? Pediatric surgeons. According to the study, the three drugs associated with the most payments were Xarelto (Janssen; \$176.34 million), Eliquis (Bristol Myers Squibb; \$102.62 million), and Humira (AbbVie; \$100.17 million). The three medical devices associated with the most payments were the da Vinci Surgical System (Intuitive Surgical; \$307.52 million), Mako SmartRobotics (Stryker; \$50.13 million), and CoreValve Evolut (Medtronic; \$44.79 million).

3. “Accuracy of Financial Disclosures in Radiology Journals” – published in the *Journal of the American College of Radiology* on March 23, 2024.⁴

- > Analyzed financial disclosures provided by U.S.-based authors in five prominent radiology journals and found inconsistencies between those disclosures and the Open Payments database.

4. “Undisclosed financial conflicts of interest in DSM-5-TR: cross sectional analysis” – published in the *British Medical Journal (BMJ)* on January 10, 2024.⁵

- > Analyzed physicians who served as members of a panel or task force on the 2022 edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR). The researchers found that 60% of the 92 U.S. panel and task force members of the DSM-5-TR received payments based on Open Payments data and argue for prohibiting financial conflicts of interest among these members to ensure unbiased, evidence-based mental health practice.
- > There is also an associated podcast on this paper featuring the authors⁶, as well as supplemental articles that focus on psychiatry in particular being prone to industry sway due to a lack of objective laboratory measures in many cases and the subjective nature of psychiatry diagnoses.

5. “Maker of Wegovy, Ozempic showers money on U.S. obesity doctors” – published in *Reuters* on December 1, 2023.⁷

- > Analysis found that Novo Nordisk paid U.S. healthcare providers at least \$25.8 million over a decade in fees and expenses related to its weight-loss drugs. According to the article, the company concentrated money on an “elite group of obesity specialists who advocate giving its powerful and expensive drugs to tens of millions of Americans.”

Key Takeaways

Should Legal and Compliance teams care about media coverage or articles in medical journals?

These articles don't reflect government agencies telling companies what to do, nor are they enforcement actions that compliance professionals can take to leadership as evidence of the financial toll of non-compliance. But they are good examples of the “New York Times Test” that asks you to imagine your (or your company's) conduct being on the front page of the newspaper. Plus, if history is an indication, many regulations and enforcement targets result from initial media spotlight.

That said, in some sense it will always be an uphill battle to ensure balanced media coverage of financial interactions between the industry and the healthcare practitioner community. Often the notable benefits of effective industry collaboration are absent from articles that aim to expose potential conflicts of interest – the importance of clinical research participation, expert consulting advice, peer-to-peer education, etc.

What companies should certainly do is aim to ensure the data they are reporting is accurate and have concrete, legitimate reasons for the payments they make to healthcare professionals. There is now 10 years of historical Open Payments data available online. Each year, the data has gotten more robust, the website functionality has gotten better, and researchers have increasingly gotten more comfortable analyzing the data. In fact, it's quite simple to pull information from the Open Payments website and conduct the analysis the authors relied upon for the various articles above. Companies should not wait for motivated third-parties to review their data for them; they should proactively do so themselves.

It's also notable that many articles are critical of deviations between (a) the conflict of interest disclosures for medical journals, diagnostic guides, and medical review panels verses (b) what is required to be reported by manufacturers as part of the Open Payments law

Some of these gaps are driven by divergent disclosure rules that are outside both the company's and the doctor's control. For example, a doctor will likely not know the "reportable" value of a meal they received, how a company calculated the cost of a journal reprint, how associated research payments are allocated to comply with specific transparency laws, etc. Without advanced notice from each manufacturer the doctor works with, the doctor would need to wait until the Open Payments data is public (typically in June of the calendar year following the payment). Perhaps – to be safe from allegations of withholding information – more healthcare professionals will simply refer readers to the Open Payments database for information on their interactions with industry.



1. <https://openpaymentsdata.cms.gov/search>
2. <https://www.nbcnews.com/health/health-news/10-doctors-fda-panel-abbott-heart-device-financial-ties-company-rcna146273>
3. <https://jamanetwork.com/journals/jama/article-abstract/2816900>[https://www.jacr.org/article/S1546-1440\(24\)00302-8/abstract](https://www.jacr.org/article/S1546-1440(24)00302-8/abstract)
4. [https://www.jacr.org/article/S1546-1440\(24\)00302-8/abstract](https://www.jacr.org/article/S1546-1440(24)00302-8/abstract)
5. <https://www.bmj.com/content/384/bmj-2023-076902>
6. <https://www.madinamerica.com/2024/03/undisclosed-financial-conflicts-of-interest-dsm-lisa-cosgrove-brian-piper/>
7. <https://www.reuters.com/investigates/special-report/health-obesity-novonordisk-doctors/>



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