



For Immediate Release

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PAPER EXAMINES LEGAL ISSUES AND RISKS OF ONLINE PHARMACEUTICAL MARKETING

Recently, as more individuals gain access to the Internet and use it as a means of researching medical and health care information, online pharmaceutical marketing has increased dramatically. As a new Washington Legal Foundation (WLF) CONTEMPORARY LEGAL NOTE discusses, online pharma marketing has been an effective way for individuals and doctors to seek information about specific treatments and their side effects. Attorney Joseph P. McMenamain discusses the impact this increased marketing has had on individuals and doctors, as well as the legal issues that.

This WLF CONTEMPORARY LEGAL NOTE, ***Online Pharma Marketing: Lack of Clear Rules Compels Caution on the Web***, was authored pro bono by **Joseph P. McMenamain**, a partner in the Richmond, Virginia office of McGuire Woods LLP.

Mr. McMenamain focuses his discussion initially on how pharmaceutical marketers have taken advantage of the most recent technological developments, in particular Web 2.0 technology and interactive media. For example, applications such as Web TV, podcasts, interactive quizzes and polls, and simulation of real-world interaction have been used to expand pharma's reach into more households and doctor offices. In addition to company web sites, third party sites are increasingly used to gather information. The author notes, as an example, how both free and for fee queries are submitted to third party sites for information.

The CONTEMPORARY LEGAL NOTE provides analysis of what legal and regulatory issues might arise when marketers use information distribution outlets such as chat rooms, blogs, and third party postings. Enforceable contracts may be created in a number of instances where material posted may be subject to software licenses, where linking and banner agreements may apply, or where a contract exists relating to use of unsolicited email in promotion. Mr. McMenamain also notes the significant consumer privacy concern which can arise.

In the final several sections of the paper, Mr. McMenamain contemplates how legal doctrines such as the learned intermediary defense – which posits that companies are under a duty to warn doctors, not consumers, of drugs' risks – apply in the context of Internet marketing. He also examines the Food & Drug

Administration's enforcement record, while noting that FDA hasn't promulgated regulations that formally apply to the Internet.

Copies of this educational paper, WLF CONTEMPORARY LEGAL NOTE Number 59 (June 2008), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.

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