

Marine Corps plans, programs and budget decisions. His valuable contributions have enabled the committee, the Department of the Navy and the Marine Corps to strengthen their close working relationship and to ensure that the most modern, well-trained and well-equipped Marine forces are attained for the defense of our great Nation.

Mr. President, Lee Dixson and his wife, Carolyn, have made many sacrifices during his career, and as they embark on the next great adventure beyond their beloved Marine Corps, I call upon my colleagues to wish him every success and to thank him for his long, distinguished and ever-faithful service to God, country and the Department of the Navy. Semper Fidelis.

BRISTOL-MYERS SQUIBB COMPANY
ABUSE OF AVERAGE WHOLE-
SALE PRICE SYSTEM

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 2001

Mr. STARK. Mr. Speaker, I have recently sent the following letter to Bristol Myers Squibb highlighting the extent to which this company has been inflating its drug prices and engaging in other deceptive business practices.

The evidence provided shows that Bristol-Myers Squibb Co. has knowingly and deliberately inflated their representation of the average wholesale price ("AWP") which is utilized by the Medicare and Medicaid programs in establishing drug reimbursements to providers.

In doing so, Bristol-Myers Squibb Co. is abusing the public trust, endangering patients by affecting physician prescribing practices, and exploiting America's seniors and disabled who are forced to pay 20 percent of these inflated drug costs. And American taxpayers are picking up the rest of the tab.

To help bring an end to these harmful, misleading practices, I have called on the FDA to conduct a full investigation into such business practices.

These practices must stop and these companies must return the money to the public that is owed because of their abusive practices.

I submit the following letter to Bristol-Myers Squibb Co. to the CONGRESSIONAL RECORD.

February 22, 2001.

Mr. PETER DOLAN,
President, Bristol-Myers Squibb Co., New York,
NY.

DEAR MR. DOLAN: Ongoing Congressional investigations have uncovered compelling evidence that Bristol-Myers Squibb ("Bristol") has for many years deliberately overstated the prices of some of its prescription drugs in order to cause the Medicare and Medicaid programs to pay inflated amounts to Bristol's customers. Bristol's participation in this scheme is costing American taxpayers billions of dollars in excessive drug costs and is jeopardizing the public's health safety and welfare. Bristol touts itself as "America's Most Admired Pharmaceutical Company" and says it is 11 out of 1,025 companies measured for "social responsibility".

Yet, I think it is outrageous that your company would falsely inflate prices at a time when Medicare and the states' Medicaid Programs battle the crisis of spiraling prescription drug prices.

The price manipulation scheme is executed through Bristol's falsely inflated representations of average wholesale price ("AWP"), direct price ("DP") and wholesaler acquisition cost ("WAC"), which are utilized by Medicare, Medicaid and most private third party payers in establishing drug reimbursements to providers. The difference between the inflated representations of AWP, DP and WAC versus the true prices that providers are paying is regularly referred to in your industry as "the spread".

Bristol has control over the AWP's, DP's and WAC's published for its drugs and directs national publishers to change their prices. An internal Bristol document directing a national publisher of drug prices to increase all of Bristol's AWP's for oncology drugs by multiplying Bristol's supplied direct prices by a 25% factor rather than the previous 20.5% factor. A variance of 16% to 20% between direct drug prices and AWP's represents a range that would more than generously cover inventory costs, normal price variances and any reasonable mark-up on oncology drugs occurring in the wholesale marketplace [Bristol sold the vast majority of its infusion oncology drugs directly to oncologists through its wholly owned OTN subsidiary, and while OTN did not mark up drug prices or at any time own the drugs, it was instead paid a commission directly from Bristol without the occurrence of any significant mark-ups at the wholesale level]. None of the 4.5% price increase was intended to provide more revenues to Bristol or enable wholesalers to charge higher prices to oncologist. There were no significant price markups at the wholesale level. Instead, the increase in the AWP created a spread that, in itself, provided a financial kickback to oncologists for prescribing Bristol's cancer drugs.

Since the additional 4.5% orchestrated by Bristol in 1992, the Medicare Program has needlessly paid more than an estimated \$60 million dollars for just two of Bristol's cancer drugs—this taxpayer abuse does not even account for additional Medicare beneficiary co-payments. To add insult to injury, one of the drugs Taxol (Paclitaxel) was significantly developed with taxpayer funds by the National Institute of Health.

A similar AWP increase by Glaxo drew the following objection from its competitor, Smith Kline Beecham: In an apparent effort to increase reimbursement to physicians and clinics, effective 1/10/95, Glaxo increased AWP for Zofran by 8.5% while simultaneously fully discounting this increase to physicians . . . The net effect of these adjustments is to increase the amount of reimbursement available to physicians from Medicare and other third party payors whose reimbursement is based on AWP. Since the net price paid to Glaxo for the non-hospital sales of the Zofran multi-dose vial is actually lower, it does not appear that the increase in AWP was designed to increase revenue per unit to Glaxo. Absent any other tenable explanation, this adjustment appears to reflect an intent to induce physicians to purchase Zofran based on the opportunity to receive increased reimbursement from Medicare and other third party payors. In fact, we have had numerous verbal reports from the field concerning Glaxo representatives who are now selling Zofran based on the opportunity for physicians to receive a higher re-

imbursement from Medicare and other third-party payors while the cost to the physician of Zofran has not changed.

The evidence clearly shows that Bristol has intentionally reported inflated prices and engaged in other improper business practices in order to cause its customers to receive windfall profits from Medicare and Medicaid when submitting claims for certain drugs. The evidence further reveals that Bristol manipulated prices for the express purpose of expanding sales and increasing market share of certain drugs where the arranging of a financial benefit or inducement would influence the decisions of healthcare providers submitting the Medicare and Medicaid claims. Indeed, Bristol did not falsify published prices in conjunction with other drugs, where sales and market penetration strategies did not include the arranging of such financial "kickbacks" to the healthcare provider.

In the case of the drugs for which Bristol sought to arrange a financial kickback at the expense of the government programs, the manipulated discrepancies between your company's falsely inflated AWP's and DP's versus their true costs are staggering. For example, in the 2000 edition of the Red Book, Bristol reported an AWP of \$1296.64 for one 20mg/ml, 50ml vial of Vepesid (Etoposide) for injection [NDC #00015-3062-20], while Bristol was actually offering to sell the exact same drug to Innovatix members (a large national group purchasing organization) for \$70.00. This represents a spread between Bristol's falsely inflated AWP and the real price of \$1226.64.

In addition to Bristol's unconscionable price manipulation of Vepesid, I am also concerned about Bristol's newer drug Etopophos. As the following excerpts from Bristol's own documents reveal, Bristol's earlier participation in the false price manipulation scheme with respect to Etoposide (Vepesid) interfered with physicians medical decisions to use Etopophos:

"The Etopophos product profile is significantly superior to that of etoposide injection . . ."

"Currently, physician practices can take advantage of the growing disparity between VePesid's [name brand for Etoposid] list price (and, subsequently, the Average Wholesale Price [AWPI]) and the actual acquisition cost when obtaining reimbursement for etoposide purchases. If the acquisition price of Etopophos is close to the list price, the physician's financial incentive for selecting the brand is largely diminished".

Bristol thus acknowledges that financial inducements influence the professional judgment of physicians and other healthcare providers. Bristol's strategy of increasing the sales of its drugs by enriching, with taxpayer dollars, the physicians and others who administer drugs is reprehensible and a blatant abuse of the privileges that Bristol enjoys as a major pharmaceutical manufacturer in the United States.

Physicians should be free to choose drugs based on what is medically best for their patient. Inflated price reports should not be used to financially induce physicians to administer Bristol's drugs. Bristol's conduct, in conjunction with other drug companies, has cost the taxpayers billions of dollars and serves as a corruptive influence on the exercise of independent medical judgment.

Bristol employed a number of other financial inducements to stimulate the sales of its drugs at the expense of the Medicare and Medicaid Programs that were concealed from the Government. Such inducements included

volume discounts, rebates, off invoice pricing and free goods designed to lower the net cost to the purchaser while concealing the actual cost of the drug from reimbursement officials. Bristol provided free Etopophos to Drs. Lessner and Troner in exchange for the Miami oncologist's agreement to purchase other Bristol cancer drugs. This arrangement had the effect of lowering the net cost of the cancer drugs to the oncologist and creating an even greater spread than would already result from the invoiced prices. The value of the free goods is often significant. Similarly, other exhibits show that Bristol provided free Cytogards in order to create a lower than invoice cost to physicians that purchased other cancer drugs through the Oncology Therapeutic Network.

It is important to note that the above free good examples created financial incentives to the physicians that were over and above the spread created by the difference between Bristol's reported prices and regular prices provided to the market.

Bristol's price manipulation scheme was directed at both the Medicare and Medicaid Programs. Bristol commonly reported prices directly to Medicare carriers as well as State Medicaid Programs. Exhibit 8, attached hereto, contains examples of Bristol's price reports that were routinely directed to State Medicaid Programs and Medicare carriers through Western Union Mailgrams.

This scheme is further illustrated by Bristol's fraudulent price representations about its drug Blenoxane. Bristol's AWP fraud with respect to Blenoxane is clearly demonstrated in Composite Exhibit 9, attached hereto, which consists of invoices relating to sales of the drug by Oncology Therapeutic Network to Jeffery N. Paonessa, MD, an oncologist practicing in St. Petersburg, Florida. In 1995, Bristol caused an AWP to be published of \$276.29 when it sold Blenoxane to Dr. Paonessa for \$224.22. In 1996, Bristol increased its reports of AWP to \$291.49, while continuing to sell the drug to Dr. Paonessa for \$224.27. In 1997, Bristol falsely reported that it had increased its AWP to \$304.60 when, in reality, it lowered the price to oncologists as reflected by its price to Dr. Paonessa of \$155.00. In 1998, Bristol again reported a false AWP of \$304.60 while reducing its price to oncologists as reflected by the \$140.00 price to Dr. Paonessa. The following chart summarizes this information:

Blenoxane 15—NDC#00015-3010-20

Year	Red Book AWP	Price to Florida oncologist	Spread
1995	\$276.29	\$224.22	\$52.07
1996	291.49	224.22	67.27
1997	304.60	155.00	149.60
1998	304.60	140.00	164.60

It is essential that the Health Care Financing Administration ("HCFA") and other government reimbursement authorities receive truthful and accurate information from Bristol regarding drugs for which the government reimburses. The evidence uncovered by the Congressional investigations to date seems to reveal a conscious, concerted and successful effort by Bristol to actively mislead HCFA and others about the price of their drugs. I have forwarded this matter to the Department of Justice and request that Bristol's conduct be investigated under the Anti-Kickback and Prescription Drug Marketing Statutes.

Bristol's price manipulation has already caused the Medicare and Medicaid Programs unconscionable damage. The inflation index

for prescription drugs continues to rise at a rate of more than twice that of the consumer price index. The American taxpayer, Congress and the press are being told that these increases are justified by the cost of developing new pharmaceutical products. Bristol and several other manufacturers are clearly exploiting the upward spiral in drug prices by falsely reporting that prices for some drugs are rising when they are in truth and in fact falling. This fraudulent price manipulation cannot be permitted to continue. I urge Bristol to immediately examine its corporate conscience, correct its behavior and make amends for the injuries it has caused government programs to date. It is time to earn your claims for social responsibility.

Please share this letter with your Board of Directors and in particular with the Board's Corporate Integrity Committee.

Sincerely,

PETE STARK,
Ranking Member.

BLACK HISTORY MONTH

HON. ALLEN BOYD

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 2001

Mr. BOYD. Mr. Speaker, the month of February is known as "Black History Month." It celebrates, not only the black race, but also the spirit and contributions of African-American culture.

The beauty and strength of America is rooted in her people. Each ethnicity contributes to the diverse patchwork that is our nation. I find it particularly important that we recognize the history of black Americans during the month of February. From the egregious stories of abduction that brought so many ancestors to this nation, to Jackie Robinson tearing down the barriers of color in Major League Baseball, the story of black America, with its highs and lows, is one that should be revived and remembered.

As Black History Month in the year 2001 comes to a close, I embrace the future with a stronger knowledge of the past and look forward to the day Dr. Martin Luther King dreamed of "when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, 'Free at last! Free at last! Thank God almighty, we are free at last!'"

CENTRAL NEW JERSEY RECOGNIZES DEFOREST B. SOARIES, JR. FOR HIS SERVICE TO OUR COMMUNITY

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 2001

Mr. HOLT. Mr. Speaker, today I recognize Rev. Dr. DeForest B. Soaries, Jr., and his ongoing dedication to serving the needs of families throughout New Jersey. I join with the Metropolitan Trenton African American Chamber of Commerce in recognizing the many

contributions he has made working to address the growing needs of our diverse community.

On January 12, 1999, Governor Christine Todd Whitman presented Rev. Soaries as New Jersey's Secretary of State. Secretary Soaries has since brought new energy to the Department of State and its mission to preserve and promote the story of New Jersey and its citizenry. With his broad experience and extensive abilities, Secretary Soaries oversees one of the leading departments of state government.

In his official capacity, Secretary Soaries oversees the Department of State's operating agencies consisting of the New Jersey State Museum; New Jersey Martin Luther King, Jr., Commission; and the Governor's Office of Volunteerism to name a few. Additionally, Secretary Soaries was charged with advancing a number of Governor Whitman's quality of life programs.

Secretary Soaries is an ordained minister and presently serves as the senior pastor of the very active First Baptist Church of Lincoln Gardens. Since joining the leadership of First Baptist, Secretary Soaries has worked to increase the congregation's membership. Secretary Soaries has aided in the development of a number of economic, spiritual, and educational programs for church members and local residents.

Once again, I applaud the many ongoing contributions to our community made by New Jersey's Secretary of State DeForest Soaries and ask all my colleagues to join me in recognizing these commitments.

DISTINGUISHED DIRECTOR'S AWARD

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 2001

Mr. LIPINSKI. Mr. Speaker, today I personally extend my warmest congratulations to United States Marshal James L. Whigham and the honorable men and women of the Northern District of Illinois' United States Marshals Service.

On February 28, 2001, Marshal James L. Whigham accepted the prestigious 2000 Director's Distinguished District Award on behalf of the Northern District of Illinois' United States Marshals Service. The outstanding achievements of Marshal James L. Whigham and the men and women of the Northern District have brought great pride to my district, and I commend their dedication and commitment to their service.

It is a great achievement and honor to be distinguished among the other United States Marshals Service districts. This honor has truly shown the strong leadership and exemplary performance of the United States Marshals in the Northern District of Illinois.

I am very proud of United States Marshal James L. Whigham and the men and women of the Northern District of Illinois. I wish them the best of luck in their future service to our community.