

1 VERMONT MEDICAL SOCIETY RESOLUTION

2  
3 Aligning Vermont’s Prescribed Products Gift Ban with Federal Law

4  
5 *Adopted November 5, 2016*

6  
7 Whereas, Relationships among physicians and professional medical organizations and  
8 pharmaceutical, biotechnology, and medical device companies help drive innovation in patient  
9 care and contribute to the economic well-being of the community to the ultimate benefit of  
10 patients and the public; however, an increasingly urgent challenge for both medicine and  
11 industry is to devise ways to preserve strong, productive collaborations at the same time that  
12 they take clear effective action to prevent relationships that damage public trust and tarnish the  
13 reputation of both parties;<sup>1</sup> and

14  
15 Whereas, Gifts to physicians from industry create conditions that carry the risk of subtly  
16 biasing—or being perceived to bias—professional judgment in the care of patients<sup>2</sup>, even small  
17 gifts such as a single meal provided to a prescribing physician;<sup>3</sup> and

18  
19 Whereas, the Vermont Medical Society 1992 Policy on Accepting Gifts<sup>4</sup> states, in part:

20 *Gifts, hospitality or subsidies offered to physicians by industry ought not to be accepted if*  
21 *acceptance might influence the objectivity of clinical judgement.*

22 *Any gift accepted by physicians should primarily entail a benefit to patients and should not be of*  
23 *substantial value.*

24 *Subsidies for hospitality should not be accepted outside of modest meals or social events held as*  
25 *part of a conference or meeting.*

26  
27 Whereas, The Sunshine Act/Open Payments Program is a national disclosure requirement  
28 overseen by the Centers for Medicaid and Medicare Services (CMS) that began in 2013 and  
29 promotes transparency by publishing data on the financial relationships between the healthcare  
30 manufacturing industry and healthcare providers, including physicians;<sup>5</sup> and

31  
32 Whereas, Under Open Payments, manufacturers of a drug, device, biological, or medical  
33 supplies have to report to CMS many payments or transfers of value to physicians of \$10 or  
34 more; however, exceptions not subject to reporting include:

- 35 • Certified and accredited continuing medical education (CME) that adheres to standards  
36 of independence<sup>6</sup> and  
37 • “[B]uffet meals, snacks, soft drinks or coffee generally available to all participants of a  
38 large-scale conference or similar large-scale event,” such as at industry trade shows,  
39 where it would be difficult for applicable manufacturers to definitively establish the  
40 identities of the physicians who partake in the food or beverage;<sup>7</sup> and

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<sup>1</sup> American Medical Association Policy E-8.061, [Gifts to Physicians from Industry](#)

<sup>2</sup> American Medical Association Policy E-8.061, [Gifts to Physicians from Industry](#)

<sup>3</sup> DeJong C, Aguilar T, Tseng C, Lin GA, Boscardin W, Dudley R. [Pharmaceutical Industry–Sponsored Meals and Physician Prescribing Patterns for Medicare Beneficiaries](#). *JAMA Intern Med*. Published online June 20, 2016.

<sup>4</sup> See: <http://www.vtmd.org/sites/all/themes/vms/documents/policies/VMS%20Policy%20Book.pdf>

<sup>5</sup> See Section 6002 of the Affordable Care Act [P.L. 110-148] and the [CMS Open Payments User Guide, June 2016](#)

<sup>6</sup> [42 CFR § 403.904 \(i\)\(1\)](#), modified by [79 FR 67758](#); see also [AMA Statement, Open Payments and Continuing Medical Education, 2016](#)

<sup>7</sup> [42 CFR § 403.904 \(h\)\(2\)](#)

1  
2 Whereas, State policies should not discourage physicians from attending high-quality,  
3 accredited continuing medical education (CME); to take advantage of the growing array of  
4 diagnostic and treatment options, physicians must continually update their medical knowledge  
5 and practice skills;

6  
7 Whereas, a separate Vermont law bans most gifts and requires reporting of most expenditures  
8 from manufacturers of pharmaceutical products, biological products, and medical devices made  
9 to Vermont health care clinicians;<sup>8</sup>

10  
11 Whereas, Vermont law allows manufacturers to sponsor accredited CME programs and for  
12 accredited CME providers to “provide meals and other food for all conference participants”<sup>9</sup> yet  
13 requires reporting the value of the food provided and only exempts from reporting “coffee or  
14 other snacks or refreshments at a booth at a conference or seminar;”<sup>10</sup>

15  
16 Whereas, inconsistencies between Vermont law and the national Open Payments Law has  
17 created confusion for physicians, CME providers and manufacturers;

18  
19 Whereas, Vermont physicians have been both singled out for reporting and also refused food  
20 and beverage at out-of-state CME conferences; now therefore be it

21  
22 **RESOLVED, The Vermont Medical Society reaffirms its policy that gifts, hospitality or**  
23 **subsidies offered to physicians by industry ought not to be accepted if acceptance might**  
24 **influence the objectivity of clinical judgement; and be it further**

25 **RESOLVED, The Vermont Medical Society will advocate for aligning Vermont’s**  
26 **Prescribed Products Gift Ban and Disclosure Law with the federal Open Payments Law’s**  
27 **requirements, including an exception for reporting buffet meals, snacks, soft drinks or**  
28 **coffee generally available to all participants of a large-scale conference or similar large-**  
29 **scale event.**

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<sup>8</sup> 18 VSA § 4631a-4632; See also [2016 Guidance: Guide to Vermont's Prescribed Product Gift Ban and Disclosure Law for 2016](#)

<sup>9</sup> 18 VSA § 4631a(a)(1)(A)(ii); see also 18 VSA § 4631a(a)(1)(H), allowing medical device manufactures to provide meals and other food for participants in national or regional meetings at which accredited CME is offered

<sup>10</sup> 18 VSA § 4631a(b)(2)(K); 4632(a)(1)(A)(v)