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Questioning \$1 Million Fee in a Needle Deal

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group that buys medical supplies for a third of the nation's hospitals received two highly unusual payments totaling \$1.1 million from a company that had received the exclusive right to market hypodermic needles and other products to the group's hospitals.

Several legal experts said in interviews that they found the payments to the buying group, Novation, troubling because they might be construed as kickbacks if they were used to obtain business.

In one case, Novation said the nation's biggest needle maker, [Becton Dickinson & Company](#), paid it \$1 million in "special marketing" fees in 2000 in connection with a three-year contract for syringes and needles. The payment came at a time when health care workers and others were saying that some Becton Dickinson products did not provide enough protection for medical workers against accidental needle sticks, which can transmit pathogens like the AIDS virus. Smaller manufacturers were also beginning to challenge Becton Dickinson with new safety products.

Becton Dickinson, a major maker of medical devices and diagnostic systems based in Franklin Lakes, N.J., said it had also made a separate payment of \$100,000 to Novation in connection with a smaller, four-year contract for intravenous catheters that took effect in 1999.

Novation, which is based in Irving, Tex., did not specifically tell its member hospitals about the special payments, and it did not respond to repeated requests for documents showing that it had disclosed the fees. Novation had previously said in Senate testimony that it disclosed "all fee information" to its members.

Senator Herb Kohl, the Wisconsin Democrat who heads a Senate panel that is investigating big buying groups like Novation, said he did not know of the Becton Dickinson payments to Novation.

"Why do they have to give them a million dollars?" Senator Kohl asked in an interview. "Why should they do that if it's a question of the supplier having the best product — best quality, best price?"

He said he was particularly troubled that Novation had signed an exclusive contract with Becton Dickinson that did not include products from any competitors.

The payments came to light through Becton Dickinson documents obtained from a former Novation employee and a federal official, and they were subsequently confirmed by both Becton Dickinson and Novation. The payments are among about a dozen similar ones that Novation said it had accepted from medical product companies. The group would not identify those companies or the amounts received.

Becton Dickinson and Novation say that the payments were proper — intended to compensate for a lower sales commission on the products involved — and that the money played no role in the awarding of the contracts.

But James Sheehan, an assistant United States attorney in Philadelphia who specializes in health care cases, said he had "serious questions" about whether such payments were legal under federal laws against kickbacks. Citing Justice Department rules, he declined to say whether he would investigate.

Buying groups are legally allowed to receive fees from manufacturers based on a percentage of sales to hospitals. But in approving that exemption from federal rules against kickbacks, lawmakers urged regulators to monitor the fees "for possible abuse, particularly those in excess of 3 percent" of sales. Some buying groups say that they will not accept fees above 3 percent and that they do not take "special marketing fees."

Documents show that Becton Dickinson agreed to pay the special \$1 million fee to Novation as well as a 3 percent sales fee.

Buying groups like Novation are supposed to help hold down costs for hospitals while insuring that hospitals buy the best and safest medical products. But unlike purchasing agents in other industries, hospital buying groups are not financed by the buyers of products, in this case the hospitals. Rather, they are financed by the medical product manufacturers, raising questions about whose interests they serve.

A preliminary Congressional study this year found that hospitals can often buy hypodermic safety needles more cheaply outside the big buying groups. The groups disputed that finding.

The disclosure of the Becton Dickinson payments gives new ammunition to critics who say that big buying groups favor companies that can afford to pay large fees, putting smaller manufacturers at a disadvantage even when their products may be better.

The panel led by Senator Kohl has asked buying groups to adopt significant changes by the end of July or face government action. The Federal Trade Commission is also looking into whether the groups are inhibiting competition. Those actions followed a series of articles in The New York Times about the groups' business practices.

Health care workers and representatives of competing syringe companies also

reacted with anger when they learned of Becton Dickinson's payments to Novation.

"When you are talking about products that can make the difference between life and death, it shouldn't be about financial incentives," said Karen Daley, a Massachusetts nurse who contracted the AIDS virus after an accidental needle stick at a Boston hospital.

Thomas J. Shaw, chief executive of [Retractable Technologies Inc.](#), a rival syringe and needle manufacturer in Little Elm, Tex., lost out to Becton Dickinson on the Novation contract. "They didn't ask us to pay them a \$1 million fee," Mr. Shaw said, calling the payment improper.

Retractable has sued in federal court in Texarkana, Tex., accusing Novation and Becton Dickinson, among others, of violating antitrust laws by conspiring to use buying groups to monopolize the hypodermic needle market. All the defendants have denied wrongdoing.

Novation said the extra \$1 million was intended to offset lost revenue, because Becton Dickinson's payment of 3 percent on each sale was lower than the percentage paid by the previous contractor.

Becton Dickinson says it ended up making only about \$800,000 in added payments in connection with the hypodermic contract, though Novation says the company paid the full amount.

Novation said it was Becton Dickinson that offered the extra payment, while Becton Dickinson said it was "negotiated by Novation."

Officials of both Novation and Becton Dickinson declined to be interviewed for this article. But in written responses to questions, both denied that the added payments had any influence on the contract awards for hypodermics or catheters.

For his part, Gary M. Cohen, president of Becton Dickinson's medical systems division, wrote that his company won the Novation contracts on the basis of "decades of leadership in quality, value and service."

Novation said the contracts were awarded on "clinical quality factors" and with input from hospital members. The group said that Becton Dickinson would have won the contract without the extra money and that part of the added revenue was distributed to member hospitals.

Mr. Cohen also said that Becton Dickinson had taken the lead in developing safer products to help eliminate accidental needle sticks. "No other company has done as much as we have to protect health care workers from needle-stick injuries," Mr. Cohen wrote.

But in October 1999, the same month Novation awarded the hypodermic contract to Becton Dickinson, the nation's most respected testing laboratory for medical products rated Becton Dickinson's best-selling safety syringe, called the SafetyLok, "unacceptable," saying it might actually cause needle sticks.

In a later study in 2001, the testing lab, called ECRI, upgraded the device to "not recommended." As of last October, the SafetyLok was no longer Becton Dickinson's best-selling safety syringe. Another safety syringe produced by the company had higher ratings in both tests.

Separately, Becton Dickinson says it agreed to pay a special fee of \$100,000 for the IV catheter contract "to offset an anticipated loss of revenue due to a change in contracts." Novation had previously bought its IV catheters from another company.

Novation also said the payment was intended to increase its revenue. But a former Novation official said the \$100,000 payment was unrelated to the contract and was intended to help Novation pay for a new communication system.

These special fees are a potential problem, federal regulators say, because they were made early in each contract. Two years ago, the inspector general of what is now called the Centers for Medicare and Medicaid Services issued an informal advisory opinion, asserting that substantial upfront payments "appear to pose a significant risk of fraud and abuse."

That opinion stated that such payments were "difficult to trace" and tended to lock in the purchasers.

Novation says it received about a dozen special advance payments from suppliers that were awarded contracts. But the group says it recently stopped taking advance payments because of concerns raised by hospitals, though it declined to say when it had received the last one.

Mr. Sheehan, the federal prosecutor, said that based on the limited documents he had reviewed, the special marketing fees did not appear to reflect any specific services in exchange for the payments, raising questions to him about why they were paid.

Robert Simpson, chief executive of Cooperative Services of Florida, a buying agent that contracts for supplies used at several hospitals that belong to Novation, said the special marketing fees might simply inflate product prices — the opposite of what buying groups are supposed to do.

Larry Dickson, an official for Providence Health System in Seattle, which buys through Novation, said he did not know about the special payments and called them "totally inappropriate."

Julia Naunheim Hipps, a nurse and needle-stick victim from Missouri, said big

buying groups like Novation had served as the biggest roadblock to getting safer products into hospitals because of their financial ties to big manufacturers like Becton Dickinson.

Ms. Hipps said she contracted hepatitis C from an infected needle in 1999. "The concept of group purchasing is now a detriment to those working in the health care industry," she said in written testimony submitted to the Senate panel that is investigating the big buying groups.

Ms. Hipps said she felt angry and betrayed by the way hospitals buy medical supplies. "I am the end result," she said.