

Stealth Lobbying Kills Secondary Smoke Proposal; [Home Edition]

MYRON LEVIN. *Los Angeles Times* (pre-1997 Fulltext). Los Angeles, Calif.: Aug 17, 1995. pg. 1

Full Text (1566 words)

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America's tobacco companies are facing their sharpest regulatory challenge ever, with the White House and the Food and Drug Administration's move last week to declare nicotine an addictive drug and limit young people's access to tobacco products.

But President Clinton has taken on a formidable foe. The untold story of how tobacco giant Philip Morris this summer kept secondhand smoke from being listed as a cause of illness in standard medical codes is just the latest proof of the industry's masterful back-room political skills.

Following an intensive lobbying campaign, the White House Office of Management and Budget recently blocked a move by health authorities to add secondhand smoke to their coded list of causes of injuries and illnesses. Hospitals and doctors' offices use the codes when filing medical claims under Medicare, Medicaid and other insurance plans.

In a sophisticated campaign, the lobbyists raised the specter of bogus health statistics that would cloud medical understanding-while managing to avoid either a discussion of secondhand smoke or the disclosure of who employed them.

An OMB official, speaking on condition of anonymity, said the agency decided the case on its merits, adding that he neither knew nor cared whom the lobbyists worked for. "You don't want to start reacting to who made the comments, but the substance of the comments," he said.

Spearheading the effort was Multinational Business Services Inc., a pricey Washington lobbying firm that specializes in trade and regulatory matters. According to interviews and public records reviewed by The Times, the firm produced an impressive stack of legal and technical reports and assigned at least six lobbyists to the campaign-including ThorneAuchter, head of the Occupational Safety and Health Administration under President Ronald Reagan, and Jim Tozzi, a senior OMB official during the Reagan and Jimmy Carter administrations. MBS even orchestrated comments from a medical group that OMB later cited as support for its decision.

In response to questions from The Times, the firm would not say for whom it was working, stating only that a variety of its business clients could be harmed by inaccurate health statistics.

But Philip Morris was not so reticent, acknowledging it retained MBS "because of its well-known expertise in (health) risk assessments and causation issues."

Counterattack

Although all but invisible, the dispute reflects the aggressiveness of the tobacco industry's counterattack against rising concerns about secondhand smoke, the driving force behind a barrage of recent restrictions on smoking in public.

For Philip Morris and its allies, the victory provides few tangible benefits. The new code merely would have assigned a number to be entered on claim forms on the rare occasion a doctor might blame secondhand smoke for a medical condition. The doctor's opinion would not serve as proof that secondhand smoke was responsible for the illness.

But the cigarette makers are conceding nothing in their struggle to rebut a growing scientific consensus that secondhand smoke is not merely annoying but a cause of cancer and heart disease. That opinion was crystallized in the Environmental Protection Agency's landmark report in 1993 concluding that secondhand smoke causes lung cancer in nonsmokers.

In an effort to strike down the finding, the tobacco industry has sued the EPA in federal court in North Carolina, claiming the agency cherry-picked data to support a preordained conclusion. Philip Morris alluded to the lawsuit in response to questions from The Times on the medical code dispute.

"We do not believe the scientific evidence has shown that environmental tobacco smoke causes disease in nonsmokers," the company said. "It would be improper for such a (code) designation to occur during the pendency of our legal challenge, which we expect will result in the invalidation" of the EPA report.

The arcane dispute concerns a set of codes named the International Classification of Diseases, 9th Revision, Clinical Modification. In essence, it is a medical lexicon that assigns numbers to hundreds of distinct symptoms, injuries, illnesses and

medical treatments. These numbers are the shorthand used to transfer notes from patient files to Medicare and Medicaid claim forms.

A small section pertains to external causes of injuries-mostly events such as car wrecks and falls from ladders but in some cases environmental hazards. According to safety organizations, these external cause codes, known as E-codes, are an important tool for tracking injury trends and designing prevention measures.

Each year, a panel co-chaired by two agencies within the Department of Health and Human Services considers additions to the code. When these agencies-the Health Care Financing Administration and the National Center for Health Statistics-decided early last year to designate a new E-code for secondhand smoke, Multinational Business Services swung into action.

In meetings and correspondence with officials of the agencies, the lobbying firm argued, among other things, that the code would generate unreliable data, because chronic illnesses have many possible causes.

Current and former officials of the National Center for Health Statistics described one meeting at which Auchter, the former OSHA chief-turned-lobbyist, repeatedly thrust his shirt cuffs from the sleeves of his jacket to show the presidential seal on his cuff links.

"He flashed his presidential cuff links many times," recalled Robert Israel, who recently retired as the center's associate director for international statistics. "He was trying to impress us." Auchter did not return phone calls from The Times.

Although the officials believed Multinational Business Services was representing the tobacco industry, the firm never explicitly said so.

"They were extremely evasive about who their client was," Israel recalled. "They were complaining about scientific accuracy of the information, not, 'Look, the tobacco industry is worried.' "

When the agencies held firm, MBS carried the fight to OMB. There the tobacco ties grew murkier still.

Insiders at Work

MBS officials were on familiar ground at OMB. A number of them had worked there, including Tozzi.

Tozzi is "the consummate Washington insider," said David Vladeck, director of the Public Citizen Litigation Group, a consumer-oriented legal organization in Washington. He "knows OMB business better than OMB, because I don't think there's a job at OMB that Jim didn't do at one point."

At OMB, Multinational Business Services' chosen weapon was the Paperwork Reduction Act. Under the law, when federal agencies ask businesses or the public to furnish information, OMB must review the requests to assure the data being sought has "practical utility." MBS argued that the medical codes had never been reviewed by OMB under the act. Furthermore, the firm contended, E-codes for environmental hazards would generate inaccurate data-and therefore lacked "practical utility."

In studies and reports with such daunting titles as "Inaccurate Health Statistics: An Emerging Threat to the Federal Budget," and "E-Code Confusion: The Problem of Attributing Causation to Remote, Non-Proximal Events or Sources," MBS presented itself as a defender of good science, not tobacco.

In these documents, no reference was made to the new code's potential effect on tobacco companies. Instead, the likely victim of bogus data was identified as the federal government, which "could be exposed to financial liability for injuries, such as those that could be coded as being caused by exposure to electromagnetic radiation generated by radar towers," the lobbyists said.

When OMB last spring sought public comment on the dispute, MBS contacted medical groups to seek support for its position. But again, the firm was vague as to whom it represented.

Coy About Employers

"They were lobbying everyone and their cousin to support the non-reporting of E-codes," recalled Celeste Kirschner of the American Medical Assn.

When Kirschner asked about rumors they were representing tobacco companies, the lobbyists acknowledged having tobacco clients "but did not indicate that they were . . . talking with us at their behest," she said.

When officials of the American College of Surgeons posed the question, the lobbyists replied that "they had a couple of clients that were interested in the E-code issue, and they told us they were utility firms," said Sally Garneski, spokeswoman for the group.

Impressed by MBS' logic, the American College of Surgeons fired off a helpful letter to OMB. For chronic illnesses with many possible causes, the use of E-codes "offers very little scientific merit and holds significant potential for causing the dissemination of misleading and inaccurate information," it said in the June 9 letter.

Three weeks later, OMB quoted the letter in its decision.

In the ruling, OMB directed the Department of Health and Human Services not to publish E-codes adopted since 1994 "because their practical utility has not been fully evaluated." The effect of the decree is to rescind the code for secondhand smoke and bar the department from adopting two dozen other codes later this year.

OMB also directed the department to review all existing E-codes to identify those that "have practical utility and merit dissemination."

The department is reviewing the OMB decision, a spokesman said. "We're still at the clarification stage. We want to hear more about their reasoning."

Privately, health officials say they hope through negotiations to change OMB's stand.

Judith Miller Jones, who chairs the National Committee on Vital and Health Statistics, which advises the secretary of health and human services on data issues, was critical of OMB and the tobacco industry. If tobacco firms "think that they're going to deny the science by denying the coding, I think that's a very naive game."

In a written statement to The Times, Multinational took a different view: "It is important to note that MBS did not win this issue. The American public won."

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Section: *PART-A; National Desk*

ISSN/ISBN: 04583035

Text Word Count 1566

Document URL: