Future of Proposed Tobacco Settlement Looks Hazy

The houses of medicine and public health need to heal their own deep rifts in order to present a united front to interests that threaten to derail a proposed settlement with the tobacco industry, warned the American Medical Association (AMA) and US Food and Drug Administration (FDA) recently.

During the National Conference on Cardiovascular Health: Coming Together for the 21st Century, Lonnie Bristow, MD, secretary-treasurer of the AMA, and Mitchell Zeller, associate commissioner for policy at the FDA, agreed most strongly on the point that good legislation is possible only if doctors, public health officials, and policy makers work together to get the most they can from the tobacco industry while it appears vulnerable.

The FDA has already begun to regulate the sale of cigarettes, said Zeller. A pilot project to “sting” retailers who sell cigarettes to minors has proven so successful that the agency is poised to extend it to all 50 states, he said.

On the negative side, the power of the tobacco lobby continues to make itself felt. Earlier this year, Congress refused to appropriate the $34 million the agency asked for to enforce tobacco regulations. In fact, the Senate, with powerful pro-tobacco members, approved only $5 million. But grassroots lobbying by public health officials changed minds, and the money was passed, Zeller said.

But in a recent conference committee to resolve differences between House and Senate bills, only $18 million in new funds was found to fund the enforcement. The agency was forced to take $16 million from other programs to meet its commitment, said Zeller.

The proposed tobacco settlement announced by industry and government officials last June has been criticized from people on both sides of the fence, he said. One group wants it passed as is; another thinks it should be jettisoned. President Clinton has proposed modifying it to make it tougher on the tobacco companies, to require stiffer penalties, and to improve attempts to stem teen smoking.

Zeller warned that divisions over how to handle the tobacco legislation must be resolved. The medical establishment must stand firm behind the President in the quest for stiff penalties and the funds needed to stem the tide of teenaged smoking.

Divisions “benefit only the tobacco industry,” he said. “This industry is desperate for legislation.” He warned that some kind of legislation will proceed, and the public health community must be united to hold Congress accountable.

He said parts of the settlement are so vague that they give the industry too many loopholes. For example, he said, the proposal that a “less dangerous” cigarette be developed is a very dangerous proposition. It is too vague because it does not stipulate “how much” less dangerous than “what” the cigarette should be, he said. It is also unclear whether such a cigarette will dissuade people from quitting smoking or entice youngsters to smoke a “safe” cigarette, he said.

Dr Bristow, a former AMA president, was present for many of the negotiations between state attorneys general, federal officials, and the tobacco industry. Although he does not support all of the proposed settlement, he also criticized the nihilism that would destroy any attempt at limiting the tobacco interest’s power, he said.

“This industry is powerful in state capitals, but even more so in the US Congress,” he said. But he said he wants to look beyond punishing the tobacco industry. “We have those who, in their zeal, believe this industry is down for the count, that we should insist on giving them nothing,” Dr Bristow said.

But, he said, nothing could be further from the truth. The US market represents only 10% of the worldwide market in cigarettes, he said. True, it takes a terrible toll, killing approximately one-half million smokers every year. To maintain profit levels that average $46 billion annually, tobacco companies must recruit new smokers, and they do, he said.

Three thousand US youngsters become smokers every day, Dr Bristow said. “One in three will ultimately die of tobacco-related disease.”

The climate of uncertainty about who would win a series of court battles over the cost to various states of smoking-related illnesses drove the tobacco industry to the bargaining table, said Dr Bristow. And that was the reason that state and federal officials went along.

Government negotiators sought FDA control over tobacco products, no preemption of existing stronger state laws, well-funded anti-smoking education programs free of tobacco-company control, no abridgment of the rights of an individual to recover damages from tobacco companies, and full disclosure of all scientific documents related to development of cigarettes and targeting of audiences, said Dr Bristow.

The industry sought two things, he said. One was predictability of what the costs of the settlement would be in both the near and long-term future. The second was “respectability.” “They were hopeful they could get immunity from criminal prosecution for what they had done in the past,” Dr Bristow said.

The proposed settlement sought to reduce teenaged smoking, move the industry toward developing less dangerous products for those who continue to smoke, and provide assistance to those who want to quit, he said. It also required licensing of tobacco vendors and insisted that those who sell the product require identification from the buyers to avoid selling to people who are underaged. It also would prohibit...
sales of less than a pack of cigarettes and bans the use of vending machines to sell cigarettes.

Cigarette advertising could be in black and white only. There could be no outdoor advertising or sponsorship of sporting or music events. There could be no cartoon characters of human images in the ads, Dr Bristow said.

If a federally mandated “look-back” program showed that programs to reduce teen smoking had not met goals of 50% by 7 years and 60% by 10 years, there would be penalties, he said.

“The industry got less than they wanted,” he said. Although predictability was there, they lost their bid to remove potential criminal exposure.

But critics of the program have now said it does not go far enough, according to Dr Bristow. He said the President and Congress now want “political cover from charges that they are putting the best interests of the tobacco industry over those of the American people.”

Over all of this hangs the threat that states may not be able to legally recover damages from the tobacco companies because the states were providing care that they were legally mandated to give, said Dr Bristow. That, he said, is the reason states like Mississippi and Texas sought to settle their cases out of court. In that way, the question does not arise.

Dr Bristow fears that those in the medical community who have criticized the agreement do not understand what is at stake. The tobacco companies, if they win in court, will simply walk away from the settlement, he warned.

“As a physician, my concern is prevention and saving lives,” said Bristow. “I am not concerned about vengeance.

The question I propose is, will defeat be snatched from the jaws of victory?

“I would submit to you that that is a distinct possibility,” he said. “As a nation, we should concentrate on saving the lives of our children. You should get the best public health advancement you possibly can at the lowest cost. Every day another 3000 children become confirmed smokers. One thousand of them will die of tobacco-related disease. We can’t afford to extend the battle over a particular point and principle.”

But sticking to the principle that a tough agreement is paramount is just what the scientific and medical community must urge, said Zeller. “The scientific community must help us to ask the right questions and give the right answers,” he said.

Zeller said there is a “downward spiral of mutual trust that benefits only the tobacco industry. The legislative process will proceed and must be held accountable,” he said. “Congress will take up the tobacco legislation. The public health community must stand united. We need a strong public health voice.

“Although the politics of tobacco have never been more unpredictable, I can predict that we all will look back with deep regret at this point in time if we fail to produce comprehensive, public health–based tobacco legislation,” Zeller said.
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