# Open Payments Errors Could Put Physicians in a Bad Light

As the Open Payments website becomes more user-friendly, physicians must ensure their disclosures are accurate, or risk misinterpretation.

BY STEVEN J. CAGNETTA, ESQ, AND STEVEN K. LADD

rimacea has just audited the recently published Open Payments (Sunshine Act) records for 25 selected physicians (from young innovators to department chiefs across many specialties). Payments totaling nearly \$2.4 million for the August 2013 to December 2013 time period were reviewed.

The results—and the implication of the results—were shocking. Thirty-one percent of the transactions, representing 34% of the payments, were in error.

As we wrote in "First CMS Attempt at Transparency Is Remarkably Cloudy," the Centers for Medicare & Medicaid Services (CMS) reported that only 5% of physicians registered to review their payments in advance, and fewer than 0.3% of all records were disputed. If the results of our audit are representative, then published records of millions of dollars of purported payments to large numbers of physicians would be wrong.

Figure 1  Open Payments Report — Summary 2013				
BMS	17,719.53			
Boehringer	24,280.13			
Janssen Pharmaceuticals, Inc	2,008.50			
Pfizer	84,807.67			
Total	\$128,815.83			

Figure 1. An example of CMS Open Payments data organized by physician into an easy-to-read report.

## **REVIEWING THE DATA**

In order to encourage physicians to review their Open Payments data, Primacea created software that downloads the entire Open Payments database from CMS, segregates it by physician, and organizes the result into an easy-to-read report. An example is shown in Figure 1.

Physicians can see the individual payment data by selecting the names of each organization that reported payments to them. When we scanned various reports, we were surprised to see what appeared to be multiple copies of some payments in the data. In one of the first examples we viewed, on a single date (November 1, 2013), one company reported three entries of \$21.15 and three entries of \$33.31 for "education" (Figure 2).

Scanning payments by another company to a second physician yielded what appeared to be duplicate

entries for food and travel on a single date (September 3, 2013): One entry for \$22.28 was listed as "food and beverage," but this amount also appeared on a second line as "travel and lodging." Two other travel and lodging entries may also be duplicates (for the amounts of \$168.13 and \$9,929.93, respectively) (Figure 3).

Whether or not each payment is legitimate, the lack of clarity in this regard underscores the need for contextual information to be included with each payment, and for physicians to carefully review each line of their information as it appears on Open Payments.

## **HOW CAN THIS HAPPEN?**

Although possible, it seems unlikely that plane tickets for different trips were purchased on the same day and for the same amount unless the purchases were made for multiple travelers on one itinerary; the same can likely be said for education and food amounts. When announcing the Open Payments regulations, CMS estimated that industry would spend more than \$200 million in modifying accounting systems to track spend-

ing to be reported under Open Payments. At meetings in Washington, DC, several companies that had created such capabilities to meet Corporate Integrity Agreement conditions testified that they had spent years to reach partial success. Now that 60% of the August through December 2013 reporting has been released by CMS, it appears that much work remains to be done to keep inaccurate reporting out of the public record.

Figure 2						
11/01/2013	In-kind items and services	Education	21.15	0		
11/01/2013	In-kind items and services	Education	21.15	0		
11/01/2013	In-kind items and services	Education	21.15	0		
11/01/2013	In-kind items and services	Education	33.31	9		
11/01/2013	In-kind items and services	Education	33.31	0		
11/01/2013	In-kind items and services	Education	33.31	9		

Figure 2. Possible duplicate payment entries for "education" listed in an individual physician's payment data.

Figure 3						
09/03/2013	In-kind items and services	Food and Beverage	22.28			
09/03/2013	In-kind items and services	Travel and Lodging	22.28			
09/03/2013	In-kind items and services	Travel and Lodging	168.13	0		
09/03/2013	In-kind items and services	Travel and Lodging	168.13	0		
09/03/2013	In-kind items and services	Travel and Lodging	9,929.93	0		
09/03/2013	In-kind items and services	Travel and Lodging	9,929.93	0		

Figure 3. Another possible example of duplicate payment entries for "food and beverage" and "travel and lodging" expenses.

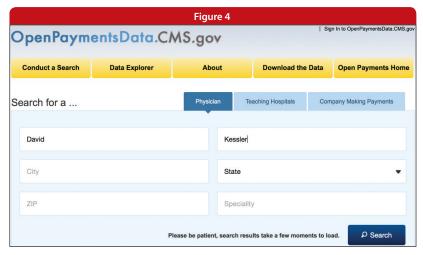


Figure 4. Sample search for Dr. David Kessler through openpaymentsdata.cms.gov.

## THE PRESS USES THESE DATA

The New York Times and others reported the top-paid physicians across the nation. Inaccuracies in the data impacted their stories. One case in particular, involving a leading research physician, had substantial double-reporting of a different nature. The researcher contacted us after being named in a national news story and told us, "There's no way I earned that much money."

The physician had 75 Open Payments records from seven manufacturers. Much of the work was performed through a contract research organization. We reviewed each record against hospital conflict-of-interest reports, 1099s, and detailed accounting records from the contract research organization. Twenty-seven of the payments were reported by two affiliates of a multinational medical manufacturer. The errors exceeded \$150,000.

Because the duplicate figures spanned different unique manufacturer names and numbers in the CMS system, it would be unrealistic for the press to perform detailed diligence when reporting on deadline. Unfortunately, when physicians and their hospitals do not have this information either, they often reply "no comment" when reporters call to confirm their stories, which is what happened in the previous case.

# YOUR PATIENTS CAN NOW SEE WHAT WAS REPORTED

Initial reviews of Open Payments data were conducted not by patients, but by reporters with expert techni-

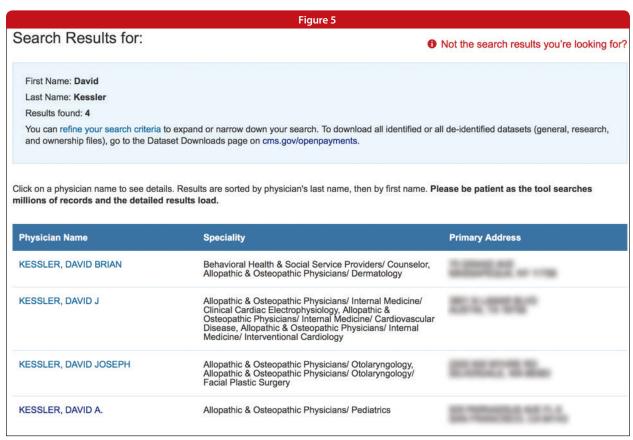


Figure 5. Our search results for "David Kessler."

cal resources. That is no longer a requirement.

The Open Payments website was virtually unusable for patients, as we previously reported.<sup>1</sup> Since then, CMS made substantial improvements, and the site

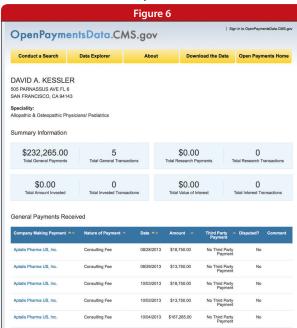


Figure 6. The 2013 reported payments listing for David A. Kessler.

now has a user-friendly interface. This time, when we researched Dr. David Kessler (the US Food & Drug Administration Commissioner in the 1990s), we entered his first name and last name on a simple form at openpaymentsdata.cms.gov (Figure 4). The results show four David Kesslers (Figure 5).

Clicking on David A. Kessler shows his reported payments in 2013, a total of \$232,265.00 in five transactions (Figure 6). Your data will be just as easy to find. Given the percentage of errors found to date, it is incumbent on each physician to ensure that his or her relationships are being accurately portrayed.

Primacea provides tools to physicians and leading hospitals to facilitate transparency in innovation and manage compliance obligations. For more information, please follow @Primacea on Twitter or www.primacea.com.

Steven J. Cagnetta, Esq, is Founder and Chief Counsel at Primacea, Inc. in Andover, Massachusetts. He may be reached at (781) 369-2900; steve.cagnetta@primacea.com.

Steven K. Ladd is Founder and President at Primacea, Inc. in Andover, Massachusetts. He may be reached at (617) 901-3140; steven.ladd@primacea.com.

Cagnetta SJ, Ladd SK. First CMS attempt at transparency is remarkably cloudy. Endovasc Today. 2014;13:109–111