

## *'Higher Standards'*

Eliot Spitzer on the Pharmaceutical Industry

**O**n July 12, 2004, New York Attorney General Eliot Spitzer spoke about business ethics at the Chautauqua Institution. Excerpts follow.

I want to tell ... [about] our recent interactions with GlaxoSmithKline, a

wonderful pharmaceutical company that has generated some “wonder drugs.” But they were marketing a drug, Paxil—that is an antidepressant—for off-label use for adolescents. The problem is that they were dissem-

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inating to their sales force a memorandum that said Paxil is safe and efficacious for adolescent use ... [even though some studies] had proven that a placebo was more effective than Paxil with adolescents, and that there was a tendency to suicidal conduct when adolescents used Paxil.

Now that's serious stuff that I would think a doctor would want to know before he or she prescribes Paxil to an adolescent. And so we then brought a lawsuit against Glaxo saying their disclosure would have required that you tell doctors that these were the clinical tests results, that you then permit the doctor or the patient to make an informed judgment. It is certainly not for me as a lawyer to make that judgment but you cannot withhold that information from doctors at the same time that you say to doctors, "Paxil is safe and efficacious."

So we brought the lawsuit and their response was, "You are holding us to a higher standard." Well, my first response was, "No we're not. The only standard we're holding you to is don't commit fraud. Don't make an assertion that is demonstrably untrue, which is really what a fraud case is all about..."

My second response was, "You know

what, maybe we *should* hold you to a higher standard because you're marketing drugs that can have very serious consequences. And I would expect you as the pharmaceutical industry to hold yourself to a higher standard given the life and death consequences of what you do..."

There is a contract that we essentially have with the pharmaceutical industry, and the contract is as follows: They, and I say this with real respect and admiration for what they do, have generated "wonder drugs" that every one of us has benefited from—every one of us. In return for their R&D, their creativity, we give them a monopoly over the marketing of that drug for a period of years. But at the end of that monopoly, we expect them to do several things: to permit generic drugs to come in and compete; to compete fairly on price, which means no anti-trust violations; and ... to be honest with us about what the drugs do and don't do...

We have had cases in each one of these three areas: generic access, pricing, and fair disclosure. And I think that if we go back to the core contract with the pharmaceutical industry, everybody will gain.