

BOOK REVIEW

KOOPERATIONEN IM GESUNDHEITSWESEN AUF DEM PRÜFSTAND

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REVIEWED BOOK

The book critically assesses cooperation in the German healthcare sector. In particular, it analyzes the role of bribery and discusses various forms of legal and illegal cooperation with and between healthcare institutions. In this context, it also provides a detailed overview of competition law implications. The book concludes by illustrating the practical role of bribery in the German healthcare sector and provides concrete suggestions for criminal defense lawyers.

Medical compliance is becoming increasingly important throughout the world. In particular, corruption appears to influence the procurement of pharmaceuticals and medical equipment in developing economies, such as China¹ and Bulgaria.² This is easily explained by high levels of corruption in these countries.³ In addition, the medical procurement sphere is traditionally characterized by very high levels of bribery.⁴ However, corruption in medical procurement is also an issue in the most developed countries such as Germany. Hence, this book is of enormous practical importance and relevance. The authors successfully combine expert scientific insight with discussion of practical implications. It was a pleasure to read their analyses, as the findings are presented in an interesting narrative style, which induces curiosity in the reader. The authors also explore groundbreaking themes.

The work pursues an interdisciplinary approach to assessing cooperation in healthcare, especially involving the medication and pharmaceutical industry. The current challenge in this domain is to meet patients' expectations while also justifying the legality of cooperation. As the authors expressly state, their book contributes to understanding this justification with reference to criminal law and "the legal perspectives of social, professional, fair competition, and antitrust laws."⁵ Further, it aims to "give a comprehensive view of the enforcement practices in fighting corruption in healthcare, from the perspectives of both the public prosecutor and the defense."⁶

In his chapter on bribery and bribability, Prof. Dr. Schneider thoroughly delineates the elements of an offense under sections 299a and 299b of the German Criminal Code (StGB) and how these are construed. He elaborately defines the characteristics of these sections by discussing their structures, identifying disparities, and explaining implications. Further, the paradigm shift on April 13, 2016 is examined brilliantly through an astute assessment from a criminal policy perspective of sections 299a and 299b StGB, which became effective on June 4, 2016. Moreover, the chapter profiles potential offenders, namely healthcare professionals, who must complete a government-regulated education before being authorized to enter the profession. Schneider provides an elaborate overview of medical professions and distinguishes them from health trade professions. He also illustrates the German legal situation and discusses foreign healthcare providers. Other content includes examples of bribery from the perspectives of both payers of bribes, as

¹ Susan Rose-Ackerman & Yingqi Yan, *Corruption in the Procurement of Pharmaceuticals and Medical Equipment in China*, 32, UCLA PAC. BASIN L.J. 1-53 (2014).

² Patrick Meagher, *Prescription for Abuse? Pharmaceutical Selection in Bulgarian Healthcare*, in: International Handbook On The Economics Of Corruption, 546–597 (Susan Rose-Ackerman ed., 2006).

³ Martha Gabriela Martinez, Jillian Clare Kohler, & Heather McAlister, *Corruption in the Pharmaceutical Sector*, in: The Handbook Of Business And Corruption: Cross-Sectoral Experiences, 329–361 (2017).

⁴ Abdul Wahab Yousafzai, *Corruption in Medical Practice: Where Do We Stand?*, 27, J. AYUB MEDICAL COLLEGE ABBOTTABAD, 515 (2015).

⁵ HENDRIK SCHNEIDER ET AL., KOOPERATION IM GESUNDHEITSWESEN AUF DEM PRÜFSTAND, 33 (2018).

⁶ Id. at 33.

well as receivers of bribes, the exploration of competitive and market behavior, and additional legal definitions.

Prof. Dr. Schneider's detailed and thorough exploration of the issue is not only highly informative but also inspires a desire to learn more. He successfully illuminates bribery in healthcare from multiple perspectives while also basing his reflections on legal expertise. His excellent points are written in an absorbing manner. In his superb overview of both active and passive bribery in the healthcare sector, Schneider succeeds in concisely summarizing all relevant aspects for the reader. He profoundly analyzes the various elements of the relevant crimes, focusing especially on sections 299a and 299b StGB.

Chapter 4 was written by attorney-at-law Claus Burghardt and dissects cooperation in healthcare. After competently illustrating cooperation in healthcare and its manifestations, he discusses insurance contracts and patient compliance initiatives. He also thoroughly investigates consultant contracts and other service contracts. Finally, Burghardt provides an interesting and informative examination of financial support for continuing medical education. Like Schneider, he excels in his analysis, which is both comprehensive and engaging.

In Chapter 5 attorney-at-law Dr. Daniel Geiger analyzes cooperation with institutions, which entails sponsoring, donations, and third-party funding. We were particularly intrigued by his analysis of external funding acquisition through institutions and universities. Geiger argues that university law and criminal law must be brought in line on what constitutes an "advantage" according to corruption delicts (§§ 331 ff. StGB). His illustrations are extensive, and his discussion of the issue combines a scientific viewpoint with practical implications. Moreover, the theme builds on previous chapters, and so is well integrated into the book's overall narrative.

Unfair competition concerns are highlighted in Chapter 6, which is authored by attorney-at-law Michael Weidner. He examines the legal implications of cooperation with pharmacies, including discounts on both prescription and over-the-counter medications. Weidner then compellingly debates advanced education measures for pharmacists concerning products, sales, and scientific content. He also discusses marketing formats, such as promotional gifts, shop window renting and placement, print advertisements, and more. Weidner's contribution offers fascinating insights and fits seamlessly with the content of the preceding chapters.

Chapter 7 addresses the antitrust implications of sections 299a and 299b StGB. Attorney-at-law Dr. Christian Burholt impressively discusses issues, such as discounts for pharmacists, medical deliveries, and the German and EU antitrust legislation governing the granting of discounts. After delineating the history of sections 299a and 299b, he details violations of antitrust laws and market abuse restraints. Burholt succeeds in conveying the key points in an intriguing manner. His analysis of different types of discounts is comprehensive, giving readers a detailed overview of the issue.

The practical implications of corruption in healthcare are documented in Chapter 8, which gives insights into penal praxis. Its co-authors – Alexander Badle, Christian Konrad Hartwig, and Dr. Andreas Raschke – provide an extremely elaborate and detailed analysis of a multitude of associated aspects. The chapter begins by explaining the principle of legality. It then considers how anonymous complaints are investigated, covering the investigation procedure in detail. The presentation of their findings is both informative and compelling, with particularized descriptions that are in no way prosaic or irrelevant. Especially interesting is the analysis of the potential for conflict between the corporation and their employees induced by internal investigations, as well as limitations due to medical secrecy, and two-stage examinations based on consent or anonymization. In addition, the authors discuss authorities' utilization of the media, which is a highly relevant and entertaining topic. Finally, their conclusion summarizes the discussed points and forecasts how the work of authorities will develop in the future with regards to medical science laws.

The final chapter considers the criminal defense of individuals and companies charged with corruption under sections 299a and 299b StGB. Attorney-at-law Felix Rettenmaier gives a knowledgeable description of how an investigation develops and isolates criminal offenses that could lead to a criminal charge. He then describes the ensuing investigative procedure and analyzes potential defense strategies. Rettenmaier details possible measures, such as temporary employment bans and searches. He also compellingly explains who is affected when an investigation ensues, and how those individuals or groups could be defended. In particular, he skillfully depicts how to execute a defense in a corruption investigation, illuminating every single step of the procedure: counseling clients determining the state of affairs, evaluating circumstances, and formulating the defense strategy. Rettenmaier is immensely thorough in detailing the process, which facilitates deep understanding of the attorney's activities in such cases. Finally, he stipulates the consequences for companies, thus reinforcing the book's practical relevance.

Overall, the entire book combines highly informative content with suspenseful and absorbing writing. The authors succeed in presenting legal issues that some might consider prosaic in a manner that maintains readers' interest throughout. Indeed, the authors give a "comprehensive overview of nearly all practically relevant case constellations and their legal appraisal."⁷ The book is of utmost importance for both academics and practitioners in the field of medical compliance.

⁷ Id. at 35.