



73. Intellectual property in the health system

Taken from the position paper of the Israeli Medical Association referring to the report of the inter-ministerial steering committee for regulation of intellectual property in government ministries, dated December 2006

Background

The report of the inter-ministerial steering committee for regulation of intellectual property in government ministries (appointed by the comptroller general in the Ministry of Finance in 2003) was published in December 2006. The committee decided to first address the major services in the government in which there is relatively high potential for the creation of intellectual property. The committee set up a sub-committee for matters related to the health care system in order to formulate principles for taking advantage of the byproducts of knowledge in government hospitals.

An examination of committee recommendations shows that the main player in the system managing intellectual property in government hospitals is none other than the research physician. It is clear that the intellectual property that the State wishes to regulate and commercialize is created by the efforts of the physician. Under these circumstances, a considerable part of the committee recommendations address physicians alone. The Israeli Medical Association has found that the recommendations of the committee significantly harm those physicians who engage in applied research, and some even worsen the working conditions of the physicians. Consequently, the Israeli Medical Association drafted its reservations about the report in its position paper. The following are some of the major failures that emerge from the report, and the position of the Israeli Medical Association regarding them.

The importance and contribution of medical research conducted in hospitals

The recommendations of the committee express the fear that encouragement of research in the hospitals will harm the current treatment of patients, or that advancement of applied research will be done at the expense of basic research routinely conducted in the hospitals. The position of the Israeli Medical Association is that this assumption is mistaken, since experience shows that not only is there no basis for the fear indicated by the committee, but that medical treatment and medical research are intertwined. It is well known that hospitals in which medical research is conducted are those that provide the public with more advanced and higher quality treatments than hospitals in which such research is not conducted.

In addition, it is impossible to separate basic research and applied research. Such separation is anachronistic, incorrect, and inapplicable. Furthermore, applied research



can be integrated in the medical treatment of the physician, and develops as a result of the interaction between the physician and his patient.

The royalties system for research physicians proposed in the report

The royalties system for research physicians proposed in the report is discriminatory, unreasonable, superficial, and inefficient. The proposed mechanism is a sliding scale in which the rate of royalties to which the research team is entitled decreases with increased income from commercialization of the invention. In accordance with the proposed model, the researcher is entitled to 40% when the income per invention reaches up to NIS 1 million; 25% when the income per invention lies between NIS 1 million and NIS 10 million; 15% when the income per invention lies between NIS 10 million and NIS 20 million; 2% when the income per invention lies between NIS 20 million and NIS 50 million; and 0% (!!!) when the income per invention is more than NIS 50 million.

This royalties mechanism discriminates against physicians engaging in research who are state employees, both relative to their colleagues who engage in research in other hospitals and research institutions, and relative to their colleagues who engage in research in academic research institutions.

The proposed royalties mechanism does not award physicians proper remuneration and does not meet the requirements for "reasonable consideration", as set forth in section 135 of the Patents Law, which specifies criteria for the exercise of judgment by the committee for compensation and royalties regarding the consideration due the inventor.

The proposed mechanism is superficial – it does not refer to the number of researchers involved in the research, and there are no rules regarding the proportional division of the consideration between the researchers. In addition, the mechanism is inefficient since in many cases physicians also engage in research in academic institutions in Israel and abroad. A discriminatory and inefficient mechanism will lead to a loss of knowledge and to a brain drain from institutions owned by the State.

The proposed arrangement is liable to cause a physician who wishes to engage, among other pursuits, in research, to prefer to be employed in a hospital that is not owned by the State, because of the discriminatory mechanism. In addition, the arrangement is unreasonable since it is incompatible with the arrangement customary in research institutions abroad.

The artificial separation between the research activities and the activities of the physician in the hospital harm the working conditions of the physicians:

The report specifies rules that apply to a physician employed by the State who engages in applied research. A physician who engages in applied research during his working hours in the hospital shall do so as part of the health corporation and shall be regarded as an employee of the corporation. The worker shall be obligated to clock in as a condition for the receipt of remuneration; the scale of his position in the hospital will be decreased



accordingly, as will his salary and social benefits.

The position of the Israeli Medical Association is that this constitutes a significant worsening of the working conditions of the physicians – a part time basis of employment will lead to the loss of salary components given only to a physician working full time. The decision to obligate clocking in is also offensive, cannot be implemented in the profession of medicine and constitutes a blow to the prestige of the profession – professionals of a corresponding status and level are not required to clock in, nor is this customary in other places throughout the world. Clocking in will not increase the productivity of the physician, but will simply increase the cost of his work.

The ownership of intellectual property created in government hospitals

The proposed arrangement states that ownership of the products of intellectual property created in government hospitals and health corporations will lie with the State. The Israeli Medical Association opposes this ruling and has proposed that ownership should remain with the corporation, with the right for parallel use by the State.

Waiver by the State of ownership of the invention for the benefit of the researcher

The report states that when the State is not interested in commercialization of the invention and permits the researcher to commercialize it by himself, the researcher will still be obligated to transfer to the corporation, to the hospital, and to the State, half of the income that would be due them without the waiver. The Israeli Medical Association argued that this is a clearly unreasonable condition.

Negative incentives for third parties

The report specifies barriers against commercial companies investing in applied research. The position of the Israeli Medical Association was that in such a situation no commercial company will be prepared to invest in research.

Prohibition of a physician to consult for a company investing in research

The report prohibits a physician to consult for a company investing in research. In most cases a company investing in research requires close accompaniment by a researcher during the stages of commercialization of an invention formulated during applied research. The prohibition in the report constitutes disproportional harm to the freedom of occupation, and a significant barrier against companies to invest in government hospitals because of the inability to receive professional consulting.