

# BIVDA

## Code of Conduct



The British In Vitro Diagnostics Association

1 Queen Anne's Gate, London SW1H 9BT Tel: 020 7957 4633 Fax: 020 7957 4644  
Web: [www.bivda.co.uk](http://www.bivda.co.uk) Email: [enquiries@bivda.co.uk](mailto:enquiries@bivda.co.uk) February 2008

## What is BIVDA?

The British In Vitro Diagnostics Association (BIVDA) was established in London in February 1992 as the national trade association for companies with major involvement and interest in the In Vitro Diagnostics (IVD) industry. BIVDA also represents the interests of the IVD industry in the UK as a member of the European Diagnostics Manufacturers Association (EDMA), which in turn represents the IVD industry in Europe.

BIVDA is governed by an Executive Committee of 10 company representatives elected from the membership, plus the President and the Director General. They assume responsibility for formulating policy together with planning activities and services. Day to day running is handled by a full-time secretariat based in Central London.

The aims of BIVDA are encompassed in its mission statement:

**"To promote the role of IVD in healthcare and to meet the needs of the UK Diagnostics Industry through representation and professional services".**

BIVDA puts the mission statement into action by promoting members' interests in a variety of ways:

- Raising awareness with the healthcare professions, general public, and politicians (of the role that IVD can play in better healthcare management).
- Identifying the key issues facing the industry and providing a national platform for their discussion. Where appropriate, taking action on behalf of the industry for its collective benefit.
- Influencing UK Government, Institutional Bodies and Professional Associations.
- Representing UK views to European legislators and European industry as a whole, via EDMA and taking an active role in their working parties.
- Facilitating UK IVD exports by identifying and acting to reduce barriers to trade, and seeking government support for overseas trade initiatives and exhibitions.
- Co-ordinating independent, accurate Market Data Surveys.
- Exploring opportunities for IVD in primary healthcare within the NHS.
- Promoting communication and co-operation between members in establishing and maintaining ethical principles and practices voluntarily agreed upon.
- Supplying an efficient information and commercial support service.
- Specifically providing assistance and support for start-up and small trading companies.
- Bringing other interested bodies to a common forum.

BIVDA represents the interest of the UK *In Vitro* Diagnostic (IVD) industry to various stakeholders including British governmental agencies, healthcare professionals who use or rely on our products, patient groups and the general public.

BIVDA believes that high quality, cost-effective IVD medical devices and related services can make a significant contribution to the safety and well being of patients and the improvement of healthcare systems.

BIVDA's members recognise that compliance with applicable laws and regulations and adherence to ethical standards are both an obligation and a critical step to the achievement of these goals and can enhance the reputation and success of the IVD industry.

This Code of Conduct is intended to provide guidance on the interactions of BIVDA members with individuals or entities that purchase, lease, recommend, use, arrange for the purchase or lease of, or prescribe members' IVD medical devices ("healthcare professionals") in the UK and, generally, elsewhere.

There are many forms of interactions between BIVDA members and healthcare professionals that advance medical science or improve patient care, including:

- **Advancement of Medical Technology:** The development of innovative medical devices and improving existing products are often the result of collaborative processes between members and healthcare professionals. Innovation and creativity are essential to the development and evolution of IVDs, often occurring outside the facilities of member companies.
- **Safe and Effective Use of IVDs:** The safe and effective use of medical technology often requires members to offer healthcare professionals appropriate instruction, education, training, service and technical support. Regulators may also require this type of training as a condition of product approval.

- **Research and Education:** Members' support of bona fide medical research, education, and enhancement of professional skills contribute amongst others to patient safety and increases access to new technology.

BIVDA members recognise that adherence to ethical standards and compliance with applicable laws are critical to the industry's ability to continue its collaboration with healthcare professionals. Members should encourage ethical business practices and socially responsible industry conduct related to their interactions with healthcare professionals. Members should also respect the obligation of healthcare professionals to make independent decisions regarding treatment.

This Code sets out the standards appropriate to various types of relationships with healthcare professionals. **This Code is not intended to supplant or supersede UK law, regulations or professional codes (including company codes) that may impose particular requirements upon members or healthcare professionals who engage in certain activities in those countries. All members should independently ascertain that their interactions with healthcare professionals comply with all current national law, regulations and professional codes.**

The Code represents an act of self discipline. BIVDA members should also acknowledge that the Code is to be applied in the spirit, as well as in the letter. Any non-member involved in the IVD industry within the UK is invited to accept and observe the Code, because it is considered that high ethical standards should be followed throughout the whole industry if it is to maintain the confidence of all the interests which it serves.

BIVDA members should ensure all relevant employees (such as sales & marketing, customer service, technical support and service engineers) are aware of the Code and their obligations in complying with it.

## I. Member-sponsored product training and education

Where appropriate members should make product education and training available to healthcare professionals to facilitate the safe and effective use of certain *in vitro* diagnostic devices. Such education and training programs should occur at appropriate locations taking account of the convenience of the attendees and the nature of the training. In particular:

- Programs and events should be conducted in clinical, laboratory, educational, conference, or other appropriate settings, including members' own premises or commercially available meeting facilities, that are conducive to effective transmission of knowledge and any required "hands on" training. The training staff should have the proper qualifications and expertise to conduct such training.
- Members may provide attendees with meals in connection with the programme, and, for educational programmes necessitating overnight stays, additional hospitality may be appropriate. Any hospitality should be modest in value, subordinate in time and focus to the educational purpose of the training and in compliance with the regulations of the country where the healthcare professional is licensed to practice.
- Members may pay for reasonable travel and lodging costs incurred by an attending healthcare professional, in compliance with the regulations of the country where the healthcare professional is licensed to practice.
- Members should not, however, pay for travel or other expenses for spouses or guests of healthcare professionals, or for any other person who does not have a bona fide professional interest in the information being shared at the meeting. It may be appropriate for spouses or guests to participate in group hospitality, provided that incremental costs to members are nominal.

## II. Supporting third party educational conferences

Independent, educational, scientific, or policymaking conferences promote scientific knowledge, medical advancement and the delivery of effective healthcare. These typically include conferences organised by national, regional, or specialty medical associations or accredited continuing medical education providers. Members may support such conferences in various ways:

- **Conference Support.** Members may provide financial grants to cover conference costs and reasonable travel and lodging expenses of healthcare professionals (and medical students, residents, fellows, and others who are healthcare professionals in training) when the conference is primarily dedicated to promoting objective scientific and educational activities. **Such support should be consistent with the regulations of the country where the healthcare professional is licensed to practice.** The conference organiser should be responsible for and control the selection of programme content, faculty, educational methods, and materials. The support by a member should be clearly stated in advance of, at the meeting and in the proceedings.
- **Modest Hospitality.** Members may provide financial support to the conference organiser in the form of meals and hospitality for programme attendees. Any meals and hospitality should be modest in value and should be subordinate in time and focus to the purpose of the conference.
- **Faculty Expenses.** Members may make grants for reasonable honoraria, travel, lodging, and meals for healthcare professionals who are bona fide conference faculty members.
- **Advertisements and Demonstration.** Members may purchase advertisements and lease stand space for company displays at conferences.

## III. Sales and promotional meetings

When it is deemed appropriate for members to meet with healthcare professionals to discuss product features, contract negotiations, and sales terms, these meetings should, as a general rule, occur at or close to the healthcare professional's place of business. In connection with such meetings, members may pay for modest meals and hospitality for healthcare professional attendees. Members may also pay for reasonable travel costs of attendees when necessary (e.g., for plant tours or demonstrations of non-portable equipment). However, it is not normally appropriate to pay for meals, travel, or other hospitality of healthcare professional's guest or any other person who does not have a bona fide professional interest in the information being presented at the meeting.

## IV. Arrangements with consultants

Healthcare professionals may serve as consultants to members, providing valuable bona fide consulting services, including research, participation on advisory boards, presentations at member-sponsored training, and product collaboration. It is appropriate to pay healthcare professionals reasonable compensation for performing these services.

The following factors support the existence of a bona fide consulting arrangement between members and healthcare professionals:

- Consulting arrangements with healthcare professionals should be written, signed by the parties and specify all services to be provided. **Such arrangements should be consistent with the regulations of the country where the healthcare professional is licensed to practice.**
- Compensation to healthcare professionals consultants should be based on the nature of and commensurate to the services provided and not on the value of *in vitro* diagnostic devices which consultants may use for their own practice; **it should be paid based on services actually provided and in accordance with applicable tax and other**

**legal requirements.** Members may pay for reasonable expenses incurred by consultants in carrying out the subject of the consulting agreement.

- Consulting agreements should be entered into only where a legitimate purpose for the services is identified in advance.
- Selection of consultants should be on the basis of the consultant's qualifications and expertise to address the identified purpose.
- The venue and circumstances for member meetings with consultants should be appropriate to the subject matter of the consultation. Member-sponsored hospitality that occurs in conjunction with a consultant meeting should be modest in value and should be subordinate in time and focus to the primary purpose of the meeting.
- When a member contracts with a healthcare professional acting as consultant for research services, there should be a written research protocol and all required consents and approvals should be obtained.

## V. Gifts

Members occasionally may provide gifts to healthcare professionals, but these should be modest in value and **in accordance with the regulations of the country where the healthcare professional is licensed to practice.** As a general rule, gifts should benefit patients or take a genuine educational form.

In addition, members may occasionally give healthcare professionals branded promotional items of minimal value related to the healthcare professional's work or for the benefit of patients. Gifts should not be given in the form of cash or cash equivalents.

This section is not intended to address the legitimate practice of providing appropriate sample products and opportunities for product evaluation.

## VI. Donations for charitable and philanthropic purposes

Members may make donations (including grants) for a charitable or other philanthropic purpose, such as supporting genuine independent medical research for the advancement of medical science or education, indigent care, patient education, public education, or the sponsorship of events where proceeds are intended for charitable purposes. **Donations should be made only to organisations or entities entitled to receive them under applicable law and regulations.** All donations should be appropriately documented.

Examples of appropriate donations and related considerations are:

- **Advancement of Medical Education.** Members may make grants to support the genuine medical education of medical students, residents, and fellows participating in fellowship programs, which are charitable or have an academic affiliation or other medical personnel. (For additional considerations regarding educational grants, see Section III, Supporting Third Party Educational Conferences.)
- **Support of Research with Scientific Merit.** Members may make research grants to support genuine medical research. The purpose of the grant should be clearly documented. (For guidance as to the limitations that apply when a member contracts with a healthcare professional to provide research on behalf of a member, see Section V, Arrangements with Consultants.)
- **Public Education.** Members may make grants for the purpose of supporting education of patients or the public about important healthcare topics.

The following practical guidelines are designed to ensure that neither BIVDA staff nor BIVDA corporate members knowingly or wilfully enter into any activity which might violate the competition laws of the European Union, with particular emphasis on conduct at BIVDA meetings.

### I. Article 81(1) EC Treaty

Article 81(1) of the EC Treaty prohibits agreements between companies and decisions by associations of companies which have as their object or effect the restriction of distortion of competition within the European Union. The concept of "agreement" and "decision" is very broad, and will include tacit agreements and passive acceptance of anti-competitive conduct.

If these rules are not complied with, whether at formal BIVDA meetings or at more informal gatherings, your company may be at risk from significant fines – up to 10% of total world-wide annual sales.

The following points are given as examples.

### II. Basic Do's and Don'ts

**DON'T AGREE** with your competitors or anyone else:

- To fix the prices of your products or conditions of sale.
- To limit your production, agree production quotas, or otherwise limit the supply of any product reaching the market.
- To divide up the market or sources of supply, either geographically or by class of customer.
- To blacklist or boycott customers, competitors or suppliers.
- To limit or control your investments or technical developments in the market.
- To bid or not to bid for a contract, or the terms of any such bid.

**DON'T DISCUSS OR EXCHANGE INFORMATION** with your competitors on any subject relating to the issues mentioned above. In other words, DO NOT have formal or informal discussions on the following:

- Individual company prices, price changes, terms of sales, etc.
- Industry pricing policies, price levels, price changes, etc.
- Price differentials, price mark-ups, discounts, allowances, credit terms.
- Costs of production or distribution, cost accounting formulas, methods of computing costs.
- Individual company figures on sources of supply, costs, production, inventories, sales, etc.
- Information as to future plans of individual companies concerning technology, investments, or the design, production, distribution or marketing of particular products including proposed territories or customers.
- Matters relating to individual suppliers or customers, particularly in respect of any action that might have the effect of excluding them from the market.
- Matters which would otherwise be regarded as currently confidential to your company.

**CONDUCT AT BIVDA MEETINGS** is particularly important. By virtue of your membership, you accept BIVDA's rules and conduct. Consequently, if BIVDA engages in any anti-competitive behaviour, even unwittingly, members can be held liable for such conduct.

- BIVDA seeks to ensure that draft agendas are checked on issues which could raise EU competition law concerns. BIVDA members should not hesitate, however, to seek legal advice on any given topic.
- If during an BIVDA meeting, discussions are held on any of the competition-sensitive matters listed in this document, individual members may request that the Chairman suspend and postpone the debate for as long as it takes to obtain legal advice on the matter.
- Members may alternatively feel free to refrain from participating in discussions on the particular agenda point.
- The individual member should make sure that his/her objection and departure from the meeting are recorded in the minutes.
- Individual members should react in the same way if attempts are made to debate clearly improper topics such as price-fixing or market-sharing.

### I. Promotion

The companies that are members of BIVDA undertake to ensure that they observe the following principles in promoting their company and its products to their customers:

- The products or services of other companies should not be disparaged, either directly or by implication, unless in the context of independent publications in the public domain.
- The clinical and scientific opinions of the medical and allied professions should not be disparaged either directly or by implication.
- Methods of promotion must never be such as to bring discredit upon, or reduce confidence in the IVD industry.



### II. Diagnostic industry representatives

*Note: The term representative is used hereafter within this Code to apply to all employees of BIVDA members and not just to those engaged in direct sales activities*

- Diagnostic representatives must be adequately trained and possess sufficient technical knowledge to present information on the company's products in an accurate and responsible manner.
- Diagnostics representatives should at all times maintain a high standard of ethical conduct in the discharge of their duties.
- The requirements of the Code which aims at accuracy, fairness, balance and good taste apply to all representations as well as printed material.
- Unfair or misleading comparisons, or comparisons implying product performance advantage which is not in fact justified, must be avoided by diagnostics representatives.
- Diagnostics representatives must not employ any inducement or subterfuge to gain an interview. No payment of a fee should be made for the grant of an interview.
- Diagnostics representatives must endeavour to ensure that the frequency, timing and duration of calls on pathology laboratories, or on hospitals, together with the manner in which they are made, are conducted in a reasonable manner. The wishes of an individual customer, or an arrangement in force at any particular establishment, must be observed by diagnostics representatives.
- Diagnostics representatives must take adequate precautions to ensure the security of diagnostic products in their possession.

## Part D – Compliance

Those who feel that the actions of a member company violate this Code should contact the Director General of BIVDA.

If the complaint is clearly set out and supported by explanatory documents, the Director General shall submit the complaint as soon as possible to the BIVDA Executive Committee (with exclusion of any individuals in direct competition with, or employed by, one of the parties involved). The Director General will ensure that they receive evidence from all parties involved in the complaint. The Executive Committee will investigate the complaint and advise the parties involved of the outcome.

If the decision and any recommendations from the Executive Committee are not accepted then the dispute shall be taken to an independent council formed by BIVDA. The party requesting this will be required to place a deposit with BIVDA to cover any costs incurred.

The Council shall consist of five members, namely:-

- An independent Chairman, such as the President of BIVDA or a past President.
- A representative from the professional association associated with the market sector from which a product complaint arises.
- A representative from another trade association.
- Two nominees from the BIVDA Executive Committee appointed by the Committee.

On the basis of the advice of the Council, the Executive Committee of BIVDA will decide on any action to be taken. If the complaint is well founded, the Executive Committee will seek to secure the assurance of the company in question that they will institute immediate action and observe the Code in future. In extreme cases, it may mean the expulsion of the company from membership of BIVDA. The Director General of BIVDA will inform in writing all parties to the complaint of the final decision and the action to be taken.



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