



EUGENE SOLTES

BRIAN TILLEY

Charity or Bribery?

Filip Kowalski wanted to be a doctor for as long as he could remember. Growing up in Poland's rugged southeastern region, his parents both died young--his father from lung cancer after years of working in a mine and his mother after suffering from emphysema following many years of smoking cigarettes. Kowalski attended the Medical University of Warsaw and, after graduating in 2009, he started in the research department of a Polish pharmaceutical company focusing on new treatments for autoimmune diseases. After several years, Kowalski tired of the slow-pace of medical research and wanted to more quickly and directly impact health care. He leveraged his experience to land a high-profile sales manager role with the Polish subsidiary of a large multinational pharmaceutical company: the American drug-maker Healthgen. Kowalski embraced the opportunity to work for a major international pharmaceutical firm with cutting edge products and exciting new treatments in the pipeline.

Kowalski's role at Healthgen involved soliciting contracts for the company's product lines with the state health agencies in Poland. A year earlier, Poland had decentralized control of its health system into a network of regional health funds that were in charge of contracting with medical vendors for drug purchases. Kowalski was tasked with navigating the new system and ultimately developing relationships with each regional agency. His boss, the general manager of Healthgen Poland, had set the ambitious goal of doubling sales of Healthgen's drugs across Poland by 2018.

In July 2015, Kowalski participated in a trade fair and exhibition in Krakow, which was attended by several of the regional health fund directors. There he met Alex Skorupa, regional director for the Poland's southeast region. Kowalski described Healthgen's drug line to Skorupa, emphasizing that the products could well-serve the region's key health objectives. Skorupa noted that he would be reviewing contract bids for the purchase of new drugs next year and urged Kowalski to submit Healthgen's bid then.

The two continued talking. Coincidentally, they discovered that they had both grown up in the rural Bieszczady Mountain region of southeastern Poland, near the border with Slovakia and Ukraine. Skorupa described how he had trained as a medical doctor, and had always wanted to help develop public health programs in the region. In 2010, four years prior to being appointed regional health fund director, Skorupa had co-founded an organization with two partners--a prominent Polish public health researcher and a local business executive--called the Subcarpathian Wellness Foundation. The foundation had a general mission to improve health and wellness in the region, especially for the most

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vulnerable segments of the population. He noted how the region suffered from higher levels of preventable diseases than other Polish regions, outcomes he attributed in part to the region's intensive industrial environments and below-average income levels. Skorupa reflected with disappointment that since becoming regional health fund director he had little time to devote to the foundation's activities and today his co-founders managed day-to-day operations.

For the rest of 2015 and early 2016, Kowalski returned to work on his other sales contracts in the region. Then in June 2016 Kowalski received a letter from the Subcarpathian regional health fund, explaining that a review of bids for a range of drug purchases would begin soon. The letter outlined the bidding process, and was signed by Skorupa. The letter cautioned that the review process would take months to complete, which was consistent with information Skorupa had conveyed in their conversation the previous year. Enthused at the chance to compete for the contract, Kowalski drafted a bid and mailed it off.

A month later unusually heavy rains in the southeast region triggered significant flooding. The Bieszczady Mountains were especially hard hit. Many of the area's roads were washed out and low-lying villages and farmlands became submerged. Kowalski had been in contact with his family members there, who were safe, but he understood how devastating this would be to an already struggling area. Outside work, he followed coverage of the situation via television news and the major Warsaw newspapers.

Days after the media reports conveyed the worst of the damage, Kowalski was surprised to get a call from Skorupa. He explained to Kowalski that the humanitarian situation in Subcarpathia was worsening and the flood waters had not yet receded. Skorupa described how, since the disaster struck, the Subcarpathian Wellness Foundation had dedicated all its efforts and resources to flood relief. Skorupa explained that perhaps Kowalski or Healthgen might be interested to help with the relief effort. Skorupa emphasized an immediate need for cash donations for the purchase of basic necessities for poor farmers and workers who had been displaced from their homes. But he also described a medium-term concern: the potential for a Hepatitis A outbreak. The region already experienced a high rate of Hepatitis A cases, and the flooding threatened to significantly increase this year's total. Skorupa explained that the foundation was working to organize an immediate vaccination drive for the region to counteract the potential outbreak.

Kowalski vowed to try to help. He mentioned that he would happily inquire amongst his colleagues at Healthgen to see if individuals or the organization itself might be interested in getting involved. This seemed only natural given Healthgen's broader mission to promote wellness in the areas in which the company operates. In the course of their phone conversation, Skorupa did not mention the regional health fund or Healthgen's pending bid.

Kowalski scheduled a meeting with his supervisor—the general manager of Healthgen Poland—for the following day, and then did some internal research into Healthgen's drug line. He found that Healthgen did have a Hepatitis A vaccine on the market and that it was sold in Poland, though sales records indicated that it accounted for a small proportion of revenue in the country. Kowalski then called Healthgen's storage facility just outside Warsaw to inquire about the current stock of the drug. The manager there informed him that the supply was plentiful and had just been restocked.

Encouraged, Kowalski walked into the meeting with his supervisor and began to outline the situation in Subcarpathia. He showed the supervisor several recent newspaper clippings detailing the flood's impacts, and an initial disaster briefing published by the International Red Cross. He also noted that the company's storage facility had an ample stock of the Healthgen's Hepatitis A vaccine. Kowalski hoped that Healthgen Poland would consider contributing to the effort, perhaps by donating vaccines

to the Subcarpathia Wellness Foundation. He explained that the foundation was founded by Skorupa, who was also the health fund director for that region. He further explained that he thought the wellness foundation's humanitarian relief work aligned with Healthgen's values to promote the general health and welfare of the communities in which the company operates. Kowalski finished his appeal by noting that he thought donating to the wellness foundation would help Skorupa remember Healthgen when he reviewed drug sales bids later that month.

In responding, Kowalski's supervisor expressed his sympathy for the affected communities in the southeast of the country, and acknowledged the genuine relief need. The supervisor also noted increasing pressure from corporate headquarters in the United States to improve sales. The supervisor cautioned against a cash donation, noting that the outcomes of such donations can be difficult to track. The supervisor recalled trainings from Healthgen corporate regarding the potential for misappropriation of charity funds by third party recipients. A donation of vaccines, however, seemed unlikely to raise those same issues. Ultimately, the supervisor advised Kowalski that as a manager, he was obligated to do his own due diligence on this, and follow the internal company guidelines for donations. The supervisor delegated authority to make the final decision on this matter to Kowalski.

Kowalski consulted the company's published guidelines, but found them to lack specific or formal guidelines for donating products like vaccines to an independent non-profit organization. He called the Clerk's office in Rzeszów – the registrar of all active foundations in the region – and inquired about the "Subcarpathian Wellness Foundation." The basic information the clerk read over the phone affirmed what Skorupa had explained. The foundation was legitimate. He then Google searched for relief and humanitarian aid agencies operating in southern Poland and Subcarpathia specifically. He noted that Oxfam and the International Red Cross had offices in Krakow, but their websites emphasized the work they coordinated in other parts of Eastern Europe, including in Ukraine, Croatia, Bosnia, and Kosovo. He noted a handful of other domestic aid agencies operating the Poland's south, but found that none specifically focused on the Subcarpathian region, as the wellness foundation was.

Kowalski felt that the foundation was uniquely positioned to provide relief to the southeast region. He was also happy that his supervisor deferred to his judgement on the matter. Reflecting again on the situation the region—his beloved homeland, no less—and the urgency of the need, he decided to authorize a donation. He agreed with his supervisor's logic that a cash donation would be difficult to track and verify, so he decided to authorize a vaccine donation. He quickly called back the storage site manager and inquired about the process for mobilizing the vaccine transfer. Then he called Skorupa to convey the good news.

Skorupa was thrilled that Healthgen would be able to contribute. He asked Kowalski to contact the head of the wellness foundation in order to coordinate the technical details for the delivery. Kowalski did so, then arranged for a sales associate in his team to personally accompany the shipment by truck from Healthgen's Warsaw storage facility to Rzeszów. There, the associate would meet a foundation representative and hand off the donation. The day after the delivery, Kowalski's associate returned with a hand-written statement from the foundation, on its letterhead, acknowledging receipt of the vaccines. The associate reported that all had gone smoothly and according to plan. Gratified, Kowalski then filled out the Healthgen's required donation reporting paperwork and submitted it to Healthgen Poland's regulatory office, indicating the reason for the donation as "supporting vaccination drive for Poland flood disaster relief."

Six weeks later Kowalski got an official letter from the regional health fund explaining that Healthgen's drug bid had been accepted. Healthgen thus became the sole marketer of a wide range of drugs to the region. This was by far the biggest contract Kowalski had yet managed to secure, and he was gratified that his effort had paid off. His supervisor commended Kowalski for the new contract, and suggested that Kowalski had a bright future at the firm.

The next month Kowalski noticed an article in a Warsaw newspaper about a successful vaccination campaign being undertaken by the Subcarpathian Wellness Foundation in the southeast region. Kowalski was happy to know Healthgen had contributed to it. But only days later, an investigative report appeared on the front-page of the main Polish daily newspaper suggesting a connection between Healthgen's vaccine donation and Healthgen's winning contract with the health fund in the region. The article noted Skorupa's former association with the foundation and current role with the health fund, and implied the donation and contract amounted to a quid pro quo. Kowalski was shocked. The foundation had been legitimate, and the cause had been genuine and urgent.

Less than a week later, his supervisor informed him that authorities from the Securities and Exchange Commission were conducting an inquiry regarding the charitable donations of Healthgen on suspicion of violating the Foreign Corrupt Practices Act. His boss explained that Healthgen U.S. was sending a team to conduct an internal investigation into Healthgen Poland's charitable giving practices.

Kowalski was aghast. Had his effort to help boost company sales and support public health in the region backfired?