

PROTECTING INFANT HEALTH IN LATVIA

How different understanding of professional ethics led to a disquieting legal case between two groups of paediatricians

This is a story about two groups of health professionals locked in a legal battle because they happen to hold different ethical values and they also differ in the level of recognition of and respect for international public health instruments. This report cannot reflect all the details of a long saga but we would like to highlight the main points so that others can perhaps draw some lessons from the experience of the IBFAN group in Latvia LKEVAB (Latvian Breastfeeding Promotion and Protection Association).

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In **August 2004** LKEVAB found in shops in Latvia a hypoallergenic infant formula enriched with iron, NAN H.A., produced by Nestlé, and with a label which had the following endorsement: **"RECOMMENDED by the Paediatric Association of Latvia"**



RECOMMENDED by the Paediatric Association of Latvia

In September 2004 LKEVAB prepared a letter in which they explained that by endorsing the Nestlé NAN H.A. product, the Paediatric Association of Latvia (LPA):

1. violated the national Regulation No.119 of the Cabinet of the Republic of Latvia (2001);
2. violated the *International Code of Marketing of Breastmilk Substitutes* and its Resolutions which stress the significant role of health care professionals in the protection of breastfeeding. Thus LPA acted in an unprofessional manner and brought discredit on its members;
3. advertised a product which could potentially harm children's health and thus violated the professional ethics of the medical profession; and
4. by lending its name to a company in a form of product endorsement, aroused suspicion of the possibility for corruption.

So LKEVAB called on LPA to take action and to publicly withdraw the advertisement. The letter was sent to the President of LPA, the President of the Doctors' Association of Latvia, the Health Minister of the Republic of Latvia and the Head of the Nestlé Baltics, based in Latvia.

LPA found the letter to be unjustified and claimed LKEVAB was spreading information which injured their honour and discredited their reputation. LKEVAB was

informed that LPA regularly ***received information from all companies which dealt with infant formulas*** in the retail trade in Latvia. LPA stated that they were unaware of any fact that could arouse suspicion about corruption. Thus, if the letter was not withdrawn, LPA would bring an action in court against LKEVAB and its President Ieva Ranka, for moral and financial compensation in the amount of around 7000 Euros. LKEVAB, although very surprised by this response and made vulnerable by the financial threat, decided nonetheless to stand by the statements made in their letter.

Thus, early in 2005, Riga City Kurzeme's District Court heard the case LPA brought against LKEVAB for withdrawal and injury to LPA's honour and pride. After having objectively evaluated all circumstances and evidence, the District Court, in its judgement dated 28 April 2005, ruled that the LPA claim was unfounded.

It is interesting here to quote an extract from the District Court's decision about the phrase "*RECOMMENDED by the Paediatric Association of Latvia*":

"... this phrase falsely motivates parents to cease to breastfeed their baby at an age when mother's milk is necessary for the baby and idealizes this breast milk substitute. The claimants wrongfully advertise breast milk substitutes and violate the requirements of doctors' professional ethics, because recommending breast milk substitutes through advertising creates a potential danger to babies' health as well as disregards the WHO *International Code of Marketing of Breastmilk Substitutes*."

The District Court further stated:

"As the letter distributed by LKEVAB contains true facts, it does not defame the claimants because in expressing truth, honour and pride cannot be injured".

The judgment also established that it was the President of the Latvian Paediatric Association who unilaterally made a decision to place the endorsement on the product. In fact, the representative of LPA had acknowledged at the District Court hearing that the endorsement on the label "Recommended by the Latvian Paediatric Association" is placed to promote the product, thus it is actually an advertisement.

Unfortunately, the LPA was not prepared to accept the District Court's decision and appealed to the Riga Regional Court. After time consuming applications on procedural matters, the appeal to the Regional Court was scheduled for hearing

on 20 February 2006. However, the Regional Court refused to deliberate on the case because of the absence of a Power of Attorney from the lawyer acting for LPA. On appeal, the Supreme Court agreed with the Riga Regional Court.

In the meantime, LPA initiated a parallel process in the original District Court to extend the time for submission of the appeal. The District Court as well as the Regional Court decided that there was no reason to give LPA an extension of time. On 12 October 2006 the initial judgement of the District Court, which was based on the merits of the case, became final.

IBFAN worldwide is very proud of our colleagues who stood firm and successfully defended their case against LPA before a court of law. IBFAN is very pleased that the District Court applied the Code directly and established a legal precedent for the protection of breastfeeding.

While IBFAN rejoices, there is also sadness. Firstly, because Ieva Ranka, LKEVAB's long time president, a person with integrity and passion for her work, cannot enjoy this victory. She passed away in autumn 2005. Ieva was a good friend of all IBFANers and an inspiration to all. Secondly, although LKEVAB won their case, it is still a defeat for the health care profession that remained divided over the question of what is ethical behaviour. The ultimate losers may again be babies.

In this regard, it is interesting to note that the International Paediatric Association (IPA) fully supports the International Code and subsequent relevant WHA resolutions. Its February 2005 *Guidelines for Relationships with the Industry* state the principles that: "*IPA will not involve itself in the endorsement or marketing of products*" and that: "*Member societies must be accountable to ethical standards consistent with IPA policy*".

Unfortunately, IPA does not have the mandate to enforce these principles with regard to its member societies. If they could do so, they would not allow LPA to continue with its practice of endorsing products. LPA, regardless the court case, is continuing the practice of endorsing infant foods with an expanded range of products, not only for Nestlé, but also for the German company Humana.



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