

# NAD Considers Material Connection Disclosures on LinkedIn

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August 14, 2025

Agendia made two posts on LinkedIn that linked to articles in which Dr. Nathalie Johnson touts Agendia's genomic test to evaluate early-stage breast cancer over Genomic Health's competing test. Genomic Health filed an NAD challenge arguing that Agendia should have disclosed Dr. Johnson's connection to the company. Although we've seen this disclosure issue come in various other cases, this case is novel in many ways.

Genomic Health argued that Dr. Johnson and Agendia have a "close relationship" that requires a disclosure. For example, Dr. Johnson and Agendia's Chief Medical Officer have co-authored publications on breast cancer research. Genomic Health also noted that Dr. Johnson participates in an Agendia study. As part of that participation, Dr. Johnson's institution receives "modest compensation" to cover costs and Dr. Johnson receives reimbursement for her travel expenses to attend a meeting.

Agendia argued that these connections weren't material and didn't require a disclosure because an audience of reasonable physicians is aware of the typical relationships between practitioners and providers of medical products and services. Moreover, unlike a typical influencer, Dr. Johnson has a significant interest in giving her objective views and her audience would assume that "trivial" connections to Agendia wouldn't impact her views on potentially life-or-death diagnoses and treatment options for patients.

NAD acknowledged that Dr. Johnson hadn't received direct compensation for her recommendations, that there was nothing to suggest that payments to her institution were out of line with conventional practices, and that the reimbursements were solely for her travel. NAD also noted that the Endorsement Guides "do not provide an analogous example applicable to the current facts." This case breaks new ground.

NAD determined that because the posts appear on LinkedIn, they "may be viewed by a more general audience of consumers, including potential patients..." NAD seemed concerned that this general audience may not expect Dr. Johnson's connections to the company, even if a professional audience would. Accordingly, NAD recommended that Agendia clearly disclose the nature of its relationship with Dr. Johnson in its posts.

This case is unique for various reasons. Dr. Johnson is different from the typical influencers in other cases and posts on LinkedIn arguably reach a different audience (who are on that platform for different reasons) than other social media platforms. Moreover, the "material connection" here is a lot different from what we've seen in other cases. The decision shows that NAD is likely to apply the Endorsement Guides broadly, even in contexts that are commonly associated with business

purposes.