How to Motivate Fred Maiorino?*

After working for 35 years as one of Schering-Plough's top salespeople, Fred Maiorino stood in his suburban home's driveway on July 15, 1991 without a job, his car, or his pride. Just minutes before, he had been fired by his boss Jim Reed over coffee in Mastori's Diner and Restaurant in Bordentown, New Jersey. Reed had simply handed Fred a dismissal letter stating he was being fired for not meeting company sales goals, excessive tardiness, failing to call on key physicians, and ignoring suggestions for improving his performance. After the firing, Fred was followed to his home eight miles away where Jim stripped Fred of his company car and sales literature. The following month, Maiorino's place was filled by Eric Adeson, a new 24-year-old hire.

Maiorino had once been a top salesperson for Schering. Why did Fred's career turn out this way? Management says it tried hard to help Fred realize the company's sales goals. Despite Schering-Plough's motivational efforts, however, Fred was now without income and a job although he said he had "told Reed I planned to work till I was seventy."

Fred experienced great personal loss and pain because of the firing and how it had been handled. He said his "Life had been ruined." Furthermore, Fred believed his age was the true reason for the firing and he thought Schering had created an evaluation and motivation system that was prejudiced against its senior sales representatives.

Feeling he had grounds for a lawsuit and wanting back his job, Maiorino contacted the law firm of Barry & McMoran of Newark, New Jersey, in late July 1991. Fred's lawyers filed a thirteen-count complaint in April 1992, asserting, among other things, that Schering violated New Jersey law against age discrimination. See Appendix A for a summary of Fred Maiorino's claims.

After an unsuccessful attempt to settle out of court for $750,000, Fred's lawyers prepared for trial. They gathered evidence for two and one half years and met Schering-Plough in court in mid-October 1994. After eight days of testimony and arguments, the trial's jury found in favor of Fred Maiorino, resulting in New Jersey's largest age discrimination award—a judgment of $8.44 million.

Fred's Sales Career at Schering-Plough

Fred Maiorino joined Schering-Plough on March 26, 1956 as a 28-year-old college graduate. He began working his way up the sales force ladder through a series of successful assignments, primarily in the areas of eastern Pennsylvania and western New Jersey. On January 1, 1984, Fred was assigned to the newly-created South Jersey Sales district which specialized in promoting Schering's asthmatics products.

He then made his home in the Trenton, New Jersey, suburb of Hamilton Square and, over a thirty-year period, raised a family of five while becoming an institution as a drug salesman. Gerald Novik a Bordentown, New Jersey, physician told how Fred "knew all the secretaries, all the nurses and he could get in, do his business and get out in minutes, while other sales reps would be sitting in the waiting room for hours." Dr. Loren Southern, a Princeton, New Jersey, allergist also attested to Fred's skills and stature in the medical community "Fred was very effective [and] both knew what he was talking about and was a pleasure to deal with. If you needed anything, drug samples or information on

* This case was prepared by Professor Joseph Wolfe, University of Tulsa, and Joann Babiak, Romine & Pickering PC, as a basis for classroom discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

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side-effects, Fred would get it for you like that." Maiorino produced results for Schering-Plough as well as garnering a good living and company recognition and performance awards. By 1986, he was earning almost $40,000 a year plus about $10,000 annually in commissions, and he had been a member of Schering's Diamond 110 Club six times, an award given to those selling at least 110% of their annual sales quota. In early 1987, he was the top-ranked representative of the nine working in his district. This ranking earned him a weekend with his wife Cathy at a local resort along with pocket money of $250 and ultimately recognition as the company's representative of the year.

Fred's honors and glad tidings did not occur in a static organizational climate given the drug industry's competitive nature. Numerous personnel shifts and sales incentive changes were implemented in Schering-Plough's sales divisions from time to time, and in September 1987, Fred got James A. Reed as his new boss. Despite being top-ranked in his district in mid-1988, Reed gave Fred his lowest ever half-year performance evaluation of "Good." This evaluation was lower than any given to the district's other reps, all of whom were at least twenty years younger. Based on superior evaluations of "Very Good" and "Outstanding," their salaries increased about 12.7% while Fred's increased only 5%.

Schering-Plough

The Schering-Plough Corporation of Madison, New Jersey, came about through the 1971 merging of the Schering Company, a German firm created in 1928, and Plough of Memphis, Tennessee. During World War II, Schering' s American assets had been seized and placed under a government-appointed director. When the war ended, the company's research efforts developed a number of drugs including Chlor-Trimeton, one of the first antihistamines, and the cold medicine Coricidin.

After its merger with Plough, Schering extended its product line to such cosmetics and items as Coppertone and Di-GeL. The antifungal Lotrimin AF was introduced in 1975, Drixoral began over-the-counter (OTC) cold remedy sales in 1982, and the anti-asthmatics Vanceril and Proventil began their respective sales in 1976 and 1981. Consumer products acquisitions were also made in the late 1970s and 1980s. These included Scholl foot-care products in 1979 and Cooper Companies in the eye-care field in 1988. In 1990, Schering-Plough sold its Maybelline cosmetics operation to Playtex, while obtaining in the same year FDA approval to sell Gyne-Lotrimin as a nonprescription treatment for yeast infections.

The company usually employs about 500 sales representatives who are assigned territories in which they manage all sales activities. Sales managers report to a district manager who supervises from 9 to 12 territories. These districts, in turn, are managed by regional sales managers. Over the course of Fred's career, Schering increased its American regions from eight to nine. The number of territories assigned to a district has frequently increased and decreased, and whole regions have either been disbanded or reformulated due to shifts in the population. Information on Schering-Plough's company performance during Fred Maiorino's last employment years is in Table 1. Figure 1 is a partial organization chart covering Schering's sales when Fred was fired.

Fred Maiorino specialized in detailing Schering's asthma products. Asthma, the industrialized world's most common chronic disease, is incurable and causes more than 5,000 deaths a year in the United States. About 4-6% of America's adult population and 20% of its children suffer from asthma. This group of about 12 million spends $6 billion annually for medicines that address the illness's symptoms. Asthmatics experience coughing, chest tightness, wheezing, and shortness of breath when they are suffering an attack. When under an acute attack, victims gasp for air and feel like they are drowning.

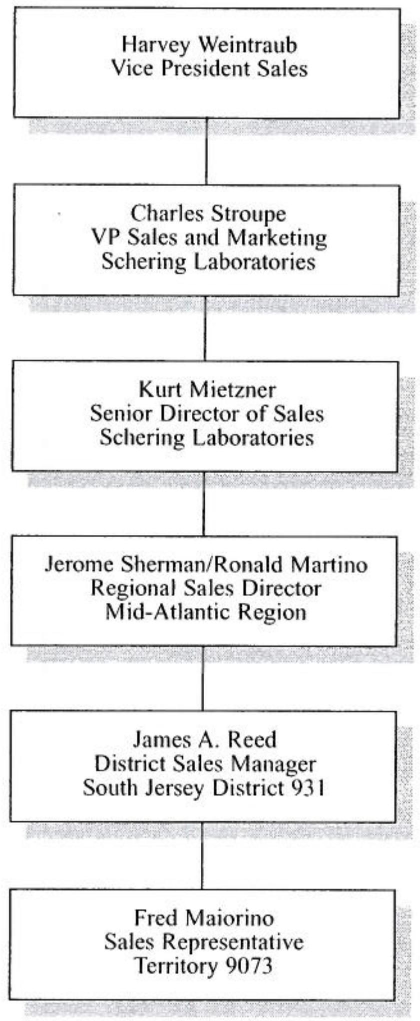
As the world's most commonly prescribed drug class, bronchodialators are prescribed which act to relax the bronchial passages' constricted muscles. These bronchodialators are self-administered and take many forms including suppositories, injections, and pills. The

TABLE 1
Selected Company Information

Company Information	1987	1988	1989	1990	1991
Sales ($000,000)	2,699.0	2,969.0	3,158.0	3,323.0	3,616.0
Net Income ($000,000)	316.0	390.0	471.0	565.0	646.0
Income Percent of Sales	11.7%	13.1%	14.9%	17.0%	17.9%
Earnings per Share	$1.37	$1.74	$2.09	$2.50	$3.01
Dividends per Share	$0.51	$0.70	$0.89	$1.07	$1.27
Employees	21,700	22,400	21,300	19,700	20,200

Source: "Schering-Plough Corporation," *Hoover's Company Profile Database*. 1995. Austin, TX. The Reference Press.

FIGURE 1
Partial 1992 Schering-Plough Sales Organization



most popular usage is as an inhalant in the configuration of a puffer with the most effective bronchodialators being beta-2 agonists. These drugs are marketed by various companies under the brand names Brethaire, Maxair, Proventil, and Vento-lin. As a group, bronchodialator sales rose 30% from 1983 to 1990.

In the early 1990s, Schering narrowly led this market's segment. Its sales on Proventil surged 36% to $79 million from 1985–1986 and another 56% from 1988 to 1989. Proventil sales in 1989 were over $135 million. Schering has also developed an improved inhalation device for the basic product and introduced sustained-release Proventil Repetabs in August 1986, to support Proventil's growth after it lost its patent protection in December 1989. Of the four brands available, over 95% of all sales have been equally divided between Proventil and Glaxo's Ventolin.

Schering-Plough and Glaxo also dominate the moderate asthma-sufferer market anti-inflammatory medication, in the form of inhaled corticosteroids, is most often prescribed and is sold under such brand names Aerobid, Azmacort, Beclovent, and Vanceril. Schering's Vanceril and Glaxo's Beclovent hold almost equal market shares. The sales of inhaled corticosteroids rose about 3% from 1983 to 1990.

Jim Reed Tries to Turn Fred Around

In February 1987, Jim Reed, a veteran Schering manager in his sixties, was named general sales manager in charge of Fred Maiorino's South Jersey sales district—a district whose territories would vary from 9 to 12 over the next few years. As shown in Figure 2, the district's major city is the state capitol of Trenton, and Fred's sales territory contained this city and its surrounding Mercer County. Table 2 presents data on factors related to health care product sales applied to Fred's territory as well as in New Jersey and the United States.

When Reed first came to the district, he turned to Fred for help and leadership in increasing Schering's sales. Maiorino recalls being told, "You're one of the senior men here.

FIGURE 2
New Jersey and the South Jersey Sales District

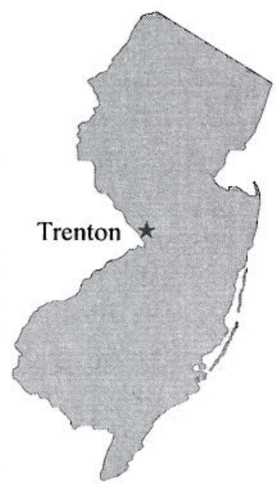


TABLE 2
Health Care Market Attractiveness Factors (Averages for 1988–1990)

Attractiveness Factor	Trenton Metro	New Jersey	United States
Median age	34.4	34.8	33.7
Population per square mile	1,432.0	992.1	70.5
Household growth	-0.8%	-0.9/0	0.2%
Household buying income	$39,766.00	$36,404.00	$22,944.00
Annual household buying power Growth	8.2%	5.8%	8.1%
Annual retail sales growth	2.0%	3.6%	5.2%
Drugstore sales/Retail sales	3.1%	2.9%	3.6%
Annual drugstore sales growth	-1.2%	4.6%	4.9%
Drugstore sales per household	$694.10	$632.12	$676.81

Source: Annual surveys of buying power, *Sales & Marketing Management*, August issues 1988–1990.

I'll need your help." At this time, Reed also implemented a new system for measuring sales representative performance that had been created by Schering in mid-1987. Instead of the firm's usual sales quota system, salesmen were now rated by two basically different measures—one which was quantitatively objective and the other which employed critical incidents of effective and ineffective sales rep actions as behavioral benchmarks.

The quantitative component was based on ranked by-product market share gains. These were reported in the company's semi-annual Therapeutic Class Report (TCR). The critical incident component was a compilation of behaviors witnessed by the district sales manager when making joint calls with his sales reps. Tables 3 and 4 present Fred's first Pharmaceutical Sales Representative (PSR) evaluation under the new system. A "V" stands for "Very Good" where "Results clearly exceed most position requirements. Performance is of a high quality and is achieved on a consistent basis." A "G" stands for "Good" where the sales rep has demonstrated "Competent and dependable level of performance. Meets all performance standards of the job." Figure 3 cites the company's rationale and use of its behaviorally anchored rating scales (BARS).

In mid-1989, Reed was reviewing Schering's national sales figures and noted Fred's sales on Proventil ranked him 469th in a national sales force of about 500 representatives. While his sales were much better on other drugs, Jim focussed on Proventil and Fred's poor performance against Cibaei's Breathine. Reed wrote a July memo to Fred saying in part that his performance was "well below what you are capable of" and encouraged him to do better. He concluded, "Fred, the first four months of 1989 were not good ones—but they are now history."

In addition to offering written encouragement, Reed started coaching Fred and provided him with medical journals so he could improve his sales pitches. Reed also increased the number of sales calls he made with him and suggested that he set realistic goals for himself on a quarterly, product-by-product basis. In response to this latter suggestion, Fred scrawled an early May 1989, memo to Reed stating "I have opted *not* to do this at this time, but would like to make the following statement instead: I have always, during my long career with Schering, strived to do the best that I can do, be the best that

TABLE 3
Fred Maiorino's Objective Evaluation Under Schering's New System

PSR Performance Evaluation
Second Half 1987

Region: 08 **District: 931** **Territory: 9073**

TCR Performance and Ranking

Product	1986 Market Share	1987 Market Share	Point Change 1986-87	Percent Change 1986-87	1987 District Standing	1987 Regional Standing
Proventil Inhaler	51.95	49.69	−2.26	−4.35	2	21
Proventil Repetabs	.00	3.09	3.09	.00	7	53
Proventil Solution	.00	5.03	5.03	.00	7	55
Proventil Tablets	3.52	57.22	23.70	70.70	1	1
Proventil Family	42.36	49.42	7.06	16.67	1	2
Theo-Dur Spray	4.21	2.93	−1.28	−30.40	7	40
Theo-Dur Tablets	53.85	66.51	12.66	23.51	1	13
Trinalin	10.62	10.69	.07	.66	9	80
Vancenase	17.03	16.67	−.36	−2.11	8	76
Composite	35.09	43.91	8.82	25.14	1	8
Quota Attainment						
Percent Attainment:	124.74					
District Standing: 1						
Regional Standing: 12						

Source: Plaintiff's Exhibit P-8.

TABLE 4
Fred Maiorino's BARS Evaluation Under Schering's New System

	Competency	Rating	Performance vs. Responsibilities
I.	Ability to use non-selling time in doctor's office effectively and establish productive relations with office personnel	V	Mr. Maiorino uses the strong rapport that he has developed with office personnel to complete appointments with busy physicians. He gains information about the physician's likes and dislikes from the nurses and receptionists.
II.	Ability to make an effective sales presentation	V	Fred gives a very comprehensive detail with the advantages of his products as compared to his competition. He is trusted and (sic) respected in the offices of his physicians.
III.	Ability to answer objections and gain commitment from M.D.	V	The combination of product knowledge and sales skills enables Fred to overcome implied objections to the use of his products. He closes as well as anyone that I have worked with as a manager.
IV.	Ability to use sales aids, samples, and literature	V	Mr. Maiorino routinely checks the inventory of his sample products in the physicians' office. He has a thorough knowledge of our various selling aids, and routinely leaves file cards for future reference by the physician. His need in this area is to have a better knowledge and use of the clinical reprints.
V.	Ability to work with retailers	V	Fred has developed a strong and respected rapport with his pharmacists throughout the years. This rapport affords him information of the prescribing habits and physicians in the surrounding area.
VI.	Ability to work with wholesalers		N/A
VII.	Ability to work with hospitals	V	Mr. Maiorino had the responsibilities of a hospital representative a few years back and this experience shows in his knowledge of the politics of hospitals. He understands formularies, how to get products approved, and then how to build volume.
VIII.	Maintain high level of Schering product knowledge, competitive products, and the marketplace	V	Fred can cite problems of competitive products and show advantages of the Schering product. He has a solid understanding of the pharmaceutical industry.
IX.	Ability to plan a sales call	G	Fred packs sales aids as needed (visuals, reprints, PI sheets, etc.) in his detail bag for ready reference.
X.	Ability to adhere to plan of action	G	Positive in accepting new ideas and suggestions at sales meetings. Uses selling aids and samples as outlined in Home Office action plans.
XI.	Ability to organize and manage territory to achieve maximum productivity	G	From the years of experience in his present territory, Fred knows the physicians, nurses, and receptionists. This rapport gains him access to many hard-to-see physicians.

TABLE 4
Fred Maiorino's BARS Evaluation Under Schering's New System *(continued)*

Competency	Rating	Performance vs. Responsibilities
XII. Ability to handle administrative duties in accordance with sales management policies and direction	G	Mr. Maiorino is very prompt with his weekly and monthly routine mail. His need (sic) to use the many successful years of experience in compiling a more reflective Monthly report. He has been a very successful PSR and has the knowledge to evaluate selling material, medical trends, and selling techniques.

Source: Plaintiff's Exhibit P–8.

I can be, and that is all anyone can expect of me. Of course, this is nothing new as I will, as in the past, continue to do the same."

On October 10, 1989, Reed's confidence in Fred broke down completely. At about 10:30 a.m. Jim drove through Fred's neighborhood, after conducting an interview with a job candidate in the area, and saw his White Dodge in his driveway although company policy says representatives are supposed to be on the road by 8:30 a.m. The checking of sales representatives' driveways was consistent with Schering policy which suggests occasional "quality checks" on its call activity requirements. One method proposed by Schering's personnel department for performing these quality checks was:

You may station yourself in the general vicinity of a representative's residence to make sure that the representative leaves home within normal working hours and then follow the

FIGURE 3
Schering-Plough's Purpose and Use of the BARS System

Policy and Procedure

The Behavior Anchored Rating Scale (BARS) for PSRs was developed to help give an accurate measure of a person's overall performance. The traditional method of judging solely by the bottom line (i.e., sales results) ignores other factors intrinsic to the individual's performance. It also does not yield information on how results were achieved or how to establish programs to improve performance. In short, a bottom-line approach by itself does meet the need to be objective in evaluation of performance. However, it does not provide feedback on an individual's strengths or weaknesses.

As an alternative to traditional methods, a behavioral focus to performance appraisal and training presents a more functional approach. There are many advantages to anchoring evaluation to job-related behavior, Of major importance is the fact that behavior can be observed, and people can learn behavior. Behavior can be taught.

When behaviors (observable acts) are properly collected and classified, they generate a Behaviorally Anchored Rating Scale (BARS). The basic idea is to look at an individual's behavior as compared with behavioral standards identified as above average, average, or below average in their performance. Emphasis is placed on the behavior that can be seen as directly leading to the desired competency. There are four basic steps to developing a BARS. (1) Descriptions of particularly effective or ineffective performance are gathered. These must be examples of actual observed behaviors. (2) The behaviors are sorted into categories that reflect a specific competency (for example, ability to use sales aids and literature). (3) Managers are then asked to write statements describing specific behavior that falls between the extremes for each competency. (4) The managers are asked to place each statement on a five-point scale, ranging from outstanding to unsatisfactory. Since the behaviors are specific to a particular position, and are developed by the people who are in a position to judge relevancy (district managers), the BARS offers a meaningful assessment for PSR performance. In practice, you should regularly observe and record examples of your representatives' behavior as outlined using the established BARS competencies. In fact, the PSR Sales Skills Profile, Goals Performance Review, and the Annual Evaluation all utilize the BARS.

Source: District Manager Policy and Procedure 40–82, Schering Corporation, March 16, 1987.

representative on territory to make sure that the representative actually calls on physicians and accounts.

Upon discovering Fred's car, Reed said he "was pretty darned upset. I had really knocked myself out to help him get higher numbers . . . and I said, 'My God, all the work I'm doing and he's, he's home.'" Jim then telephoned his regional sales manager, Ronald Martino, who said, "Don't say anything about this to Fred" and told him to spotcheck his driveway for additional transgressions. From early November to early January 1990, Reed drove 70 miles from his Landenberg, Pennsylvania home to check Fred on five different days at 20-minute intervals from 8:00 a.m.–10:00 a.m. Each time his car was in his driveway, although Fred had marked his activity report as having worked full days.

With this evidence, Schering's managers met and Ron Martino drafted a memo warning Maiorino about his tardiness. Martino was overruled by headquarters, however, which ordered a two-day suspension to be served without pay on February 13-14, 1990 for activity report falsification. Reed told Fred about his suspension at their usual Bordentown diner whereupon Fred became "defensive, almost paranoia-like [and] asked me why I had been checking on him . . . after 33 years of loyal and dedicated service, I should not question his integrity . . . There were several short, unbridled bursts of emotion on his part which included statements such as, 'I am not going to take this spying.'"

Despite the ill-will growing between them, Reed continued his efforts at improving Fred's sales. On one occasion, while visiting one of the territory's pharmacies, the two went through its computer files and located the physicians who were "whales" or large-volume drug prescribers but were not included amongst his Focus Cards. From this experience, Reed concluded Fred was not targeting the correct doctors and that "he was flying by the seat of his pants" in working his territory.

Based on this observation, Jim wrote a memo on June 22, 1990 to Maiorino regarding his territory's zip codes 8609, 8620, 8610, 8618, 8540, 8648, and 8619 stating "One wonders whether you have identified your 'whales' and, if so, are you calling on them with appropriate frequency, using selling aids effectively, and probing to find why the physicians in these . . . zips prefer the single action tablets Ventolin and Breathine" of our competitors? He then cited Fred for "unacceptable territorial management" and placed him on a probationary program that was to last for six months until December 31, 1990. While on probation, he had to match the district's average marketshare gains for Proventil inhalers, solution, and Repetabs, Vancenase AQ, Vanceril, Theo-Dur, and Eulexin. Reed stated this improvement could be obtained by "dedicated and diligent territorial management skills. Such skills would include the identification of territorial 'whales,' knowledge of their prescribing habits, and appropriate call intervals utilizing current selling aids in tandem with a well thought-out presentation" as well as "the sponsorship of influential speakers at county medical society meetings, HMOs, or gatherings of potential prescribers of our products, at least one per quarter." If these goals were not accomplished, "appropriate disciplinary action will be taken up to and including discharge."

By the probationary period's end, however, Fred had met the goals for only two of seven drugs. Of the district's nine sales representatives, he was ranked eighth in marketshare and ninth in marketshare gain. Accordingly Reed recommended on February 20, 1991 that Fred be fired. Sherman, Reed's new boss as of early January 1991, ordered a new probation, however, as he stated it "was not clear as to what goals had to be achieved for what period of time. . . . In addition to that, I felt that I wanted to focus a program on the most important products that we had and not as many as [previously listed], giving Mr. Maiorino the benefit of the doubt of a long-service employee and that we should make sure that there was no question in his mind as to what was expected of him." During this second probation, Maiorino had to meet the sales goals of Schering's two most important products, Proventil Repetabs and Vancenase AQ, while not letting the sales of the other five drugs slide. If he failed to perform in either category, he would be fired.

By the time this new probation ended on May 31, 1991, the district's marketshare gain for the Proventil Repetabs was 4.6% while Fred's was only 3%. He also fell short on the Vancenase AQ with the district's marketshare growth amounting to 1.6% and Fred's amounting to only 0.4%. Accordingly, the dismissal letter Reed handed Fred in Mastori's Diner said he had "no alternative but to terminate your employment with Schering effective immediately."

Fred Defends Himself

Although it took almost three years for his career to unravel, Fred traced the start of his problems to May 1989. In that month, Schering announced its "Voluntary Enhanced Retirement Program to all employees aged 55 and older." This program was not part of a personnel reduction effort and, in fact, the company had hired 75 to 80 young sales reps in anticipation of many employees accepting the company's "early out" package. Of the 98 eligible representatives, however, only 29 accepted the offer, thereby leaving Schering with excessive sales reps.

Reed discussed the retirement plan with Fred in September but he turned it down, noting he had a boy in college and had to pay for weddings. During the ensuing discussion, Fred was told he was foolish for not taking the retirement plan and shortly thereafter, Reed began gathering evidence of Fred's poor territorial management practices of which activity report falsification and tardiness were his initial transgressions.

Regarding the evidence Reed had compiled, Fred had asked for specific dates so he could offer an explanation or present any extenuating circumstances. Reed refused the request although Fred explained he could have been late some days because his wife had been sick, one day his mother-in-law had had a medical emergency and had to be taken to the doctor, and on other days he could have been suffering dizziness from his early morning high blood pressure medication.

Regardless of when he started his workday, Fred said he put in a full day's work, and Schering acknowledged it did not know when his workdays ended. Moreover, in an April 5, 1989 memo, Reed had encouraged his sales reps to be flexible about their work habits, and Fred reasoned he was merely applying that flexibility to his own situation. Reed had written, "By now you know that we really mean to implement the territory management concept. You have complete freedom to plan your own physician/pharmacy/hospital call schedule. All we expect of you is that you put in a full day's work each day." When asked why he did not confront Maiorino the first time he saw his car in the driveway and issue him an oral warning as dictated by company policy, Reed replied, "[I] wanted to see, was he going to compound [the tardiness] by lying on his activity report." See Figure 4 for Schering's progressive discipline policy for absenteeism.

Fred also stated that he had implemented many of Reed's suggestions. Maiorino held a dinner and Pulmonary-Allergy Symposium in Trenton in mid-December 1988, with Dr. James Fish as its speaker. On June 22, 1989, another symposium was held in Trenton on prostate and bladder cancer. Both symposia were attended by most of Fred's Allergy, Urology, and Oncology doctors. Maiorino's "Plan of Action" memo of July 9, 1990 cited other activities such as increased "calls on my whales, [the] possible addition of more new whales by more prospecting of newer physicians who are using products similar to our lines of products, or using good amounts of Schering products and have a potential for increasing to a much broader use of our products."

Although Fred had written an earlier September 15, 1989 memo that "I have always tried to do the best that I can and after all is said and done, this is all anyone can do," the stress was starting to take its toll and he felt the probations had been administered unfairly. His first probation required him to meet the district's average marketshare gains for seven

FIGURE 4
Schering-Plough's Progressive Discipline Absenteeism Policy

Supervisors are responsible for monitoring absence occurrences and may hold a discussion with an employee at any time that there are questions or concerns about the frequency or number of occurrences. Also, employees may request information from their supervisors concerning their own occurrence record at any time. In all instances in which an employee reaches the level of four (4) occurrences or three (3) occurrences and ten (10) days during a calendar year, he may expect his supervisor to initiate a discussion to review the nature and causes of absences. The primary purpose of such discussions is to improve attendance and to insure appropriate corrective action. Following such action, if attendance does not improve, an employee is subject to further disciplinary action as follows:

Within a Calendar year

Occurrences		Occurrences/Days	Disciplinary Action
5	or	4/12	Verbal Warning*
6	or	5/17	Written Warning
7	or	6/22	1-Day Suspension
8	or	7/27	5-Day Suspension
9	or	8/32	Discharge

*Verbal warnings are voided at the end of the calendar year in which the warning was given, provided the employee has had no additional occurrences.

Source: *Schering-Plough Employee Handbook*, p. 13.

drugs, although the district's eight other sales representatives were never held to the same performance standard. Fred was not informed of his second six-month probation (which ran from January 1991 to May 1991) until March 1991. Nor was he made aware that the probation was retroactive to January 1991. Fred had only three months to improve his performance and, more importantly, he was not told what goals he had to fulfill until after being informed of the probation.

Under a system created by Reed, performance goals could not be ascertained before the fact as they were based on historical sales results. Reed would rank his reps based on moving 12-month totals compared to this-year/last-year quarterly totals. When asked if Schering authorized him to use this system, he answered, "Gee, that's hard to answer the way you ask it. I have the right, in my judgment, to motivate representatives, to coach, to teach, to counsel, and I find that competition is a very strong motivating force. There's nothing that says that I cannot do something like this. A ranking report is quite motivational."

As a result of what he felt were unfair management practices, Fred's behavior with customers started to change. Jim Vizzoni, the operator of two Trenton, New Jersey, pharmacies noted, "Fred was an outgoing, happy-go-lucky guy, but you could see he was getting upset. The problem, he said, was his boss."

The Battle Continues

Upon winning his lawsuit for illegal discharge based on age, Fred exclaimed, "Justice has been done, and this shows the system works for old people as well as young people. Hopefully, this will prevent Schering-Plough and other corporations from illegally terminating longtime employees." The company, however, did not walk away and give up the fight. Company spokesperson Linn Weiss said, "Schering-Plough believes that the verdict is not justified in fact or law."

As of early 1996, Fred had not collected his jury-dictated award and Schering's lawyers indicated the company would appeal the Elizabeth, New Jersey, Superior Court decision. Schering also challenged the legal fees paid to Fred's lawyers. Fred is still without a job, after having worked temporarily for another drug company for nine months. Schering has discontinued the incentive system it inaugurated in 1988. The question remains, however, did Schering-Plough treat Maiorino unfairly or was he just a recalcitrant, "over the hill" salesman who had to be removed for the sake of sales force productivity? If Fred needed to be motivated or taught new ways of being more effective, could Schering's management have handled the situation better?

Discussion Questions

1. What qualities do veteran sales representatives such as Fred Maiorino bring to their jobs? What qualities do young sales representatives bring to their assigned territories? In the drug industry, which of the two age groups do you feel are preferable?
2. Fred was fired for deficient performance. Can Schering-Plough objectively substantiate its assessment that Fred was a poor-performing sales representative?
3. What basic virtues does the BARS system possess as a performance evaluation device? What faults does it possess? Appraise the quality of Schering-Plough's use of its BARS.
4. In evaluating sales performance, Schering-Plough switched from a quota system to a ranked marketshare increase system. Viewed from both motivational and objective measurement perspectives, what are the advantages and disadvantages of each system?
5. In terminating Fred Maiorino, did Schering-Plough give him "due process"?
6. A number of approaches to ethical decision-making behavior exist, namely the utilitarian approach, the individual rights approach, and the justice approach. Looking at the overwhelming factors in Schering-Plough's situation, was its ultimate decision to fire Fred Maiorino correct given the concerns of each of these approaches?
7. There are a number of responsibilities firms must fulfill or actions they have to do if they are to remain viable. There are a number of other responsibilities or actions they should do and might do. Where on this spectrum of obligations do you believe Schering-Plough operates?
8. What did Schering-Plough do to help Fred Maiorino improve his performance? To what degree did Fred himself frustrate his employer's attempts to improve his performance?

Appendix A: Summary of Specific Claims

In filing his claim, Fred Maiorino made the following allegations against Schering, Ronald Martino, James A. Reed, and several unnamed defendants.

1. Unlawful discrimination because of age in violation of N.J.S.A. 10:51-2(d) New Jersey Law Against Discrimination in retaliation for refusing the early retirement offered in 1989. An additional claim of unlawful age discrimination was filed for refusing to accept a later early retirement offer made in 1990.
2. Wrongful termination.
3. Unlawful discrimination by imposing different terms and conditions of employment than those imposed on younger employees. These terms and conditions included subjecting him to monitoring while younger employees were not monitored in the same fashion, and failure to advise him of their monitoring him and presenting him with their findings at the time of each monitoring occasion.
4. Breach of good faith and fair dealing when they placed him on his probations.
5. For causing severe embarrassment, emotional distress, physical distress, and humiliation as a direct and proximate result of their acts and omissions.