

HEALTH PROFESSIONAL CONSULTANT TO A PHARMACEUTICAL COMPANY v MERCK SHARP & DOHME

Invitation to webcast

A complaint was received in a private capacity from a health professional who stated that he/she worked as a consultant to a pharmaceutical company.

The complaint concerned an invitation from Merck Sharp & Dohme to a live webcast. The subject line of the mail stated 'MSD Promotional Email; Cardiovascular Matters Part 1 – Online webcast register today'. This was followed by 'This email contains promotional information and is sent to you as you have opted into receiving third-party information from Pulse' followed by the Merck Sharp & Dohme logo and 'This event is organised and fully funded by MSD'. The webcast was entitled 'Cardiovascular matters Improving the CV health of Britain'. It was the first of three webcasts.

The complainant stated that he/she received a promotional email from Pulse on 16 February which stated that it was promotional without stating what it was promoting, nor was prescribing information present.

A second email from the complainant referred to another email from Pulse he/she received on 28 February which was apparently certified but did not include prescribing information, so the complainant had no idea what it was promoting.

The detailed response from Merck Sharp & Dohme is given below.

The Panel considered that whilst it might be prudent to provide prescribing information for such medicines with the invitation, as the invitation did not promote any specific Merck Sharp & Dohme medicines it was not a breach of the Code not to. Thus the Panel ruled no breach of the Code.

The complainant stated at the time of submitting the complaint that he/she was a health professional who worked as a consultant to Novartis. It had previously been decided, following consideration by the then Code of Practice Committee and the ABPI Board of Management, that private complaints from pharmaceutical company employees had to be accepted. To avoid this becoming a means of circumventing the normal procedures for intercompany complaints, the employing company would be named in the report. The complainant would be advised that this would happen and be given an opportunity to withdraw the complaint.

The case preparation manager decided that the principles set out above would apply to consultants. Consultancy status should not be used to circumvent the normal rules for inter-company complaints.

The complainant was advised that if he/she wished to proceed with the complaint in a private capacity Novartis would be named in the case report; and the respondent company would be informed of his/her professional status and the connection with pharmaceutical companies. The complainant so agreed.

Novartis stated that it had no knowledge of, or involvement in, the complaint and did not know the complainant's identity.

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COMPLAINT

The complainant stated that he/she received a promotional email from Pulse on 16 February which stated that it was promotional without stating what it was promoting, nor was prescribing information present.

A second email from the complainant referred to another email from Pulse he/she received on 28 February which was apparently certified but did not include prescribing information either in the email or as a link, so the complainant had no idea what it was promoting.

In writing to Merck Sharp & Dohme attention was drawn to the requirements of Clauses 4.1 and 9.1 of the Code.

RESPONSE

Merck Sharp & Dohme stated that it took the requirements of both the letter and the spirit of the Code very seriously and was keen to reassure both the PMCPA and the complainant about the nature of this invitation and the rationale for it not containing prescribing information for a product.

The purpose of the invitation was to invite health professionals to an educational webcast on strategies to lower cardiovascular risk, presented by two external experts in this field. As the complainant noted, the invitation clearly stated that it was a promotional meeting within the email subject

heading and within the body of the email invitation itself and that the meeting was organised and funded by Merck Sharp & Dohme.

Health professionals were invited via a number of different routes, and included emails from five different providers (named) and sales representatives handing a similar invitation (in hard copy format) to health professionals. Health professionals could then decide whether they dialled into a local webcast or attended a local hub meeting in person, organised and facilitated by the Merck Sharp & Dohme marketing team.

The email invitation in question was sent by a third party (Pulse) which held a list of health professionals who had consented to receive promotional information. All health professionals on this list were sent the invitation.

Merck Sharp & Dohme noted that Clause 1.2 defined promotion as 'any activity undertaken by a pharmaceutical company or with its authority which promotes the administration, consumption, prescription, purchase, recommendation, sale or supply or use of its medicines'. Furthermore, Clause 1.2 explicitly included both '... the activities of representatives including any electronic or printed materials used by them ...' and '... the sponsorship of promotional meetings ...' in the definition of promotion.

As the content of the webcast included content in therapy areas where Merck Sharp & Dohme had products with a marketing authorisation and the activity was organised and facilitated by the marketing team with some involvement of sales representatives in the delivery of the meeting at some venues, Merck Sharp & Dohme decided to classify this webcast and the invitation to attend the webcast as promotional.

Clause 4.1 of the Code stated that 'the prescribing information listed in Clause 4.2 must be provided in a clear and legible manner in all promotional material **for a medicine** except for abbreviated advertisements' (emphasis added). Merck Sharp & Dohme pointed out that the invitation made no mention of a specific medicine and as such, the invitation was not promotional material for a medicine. Therefore, although the invitation pertained to a promotional activity and had been openly flagged to recipients as promotional; Merck Sharp & Dohme submitted that in and of itself, it did not require the inclusion of prescribing information and denied a breach of Clause 4.1.

Merck Sharp & Dohme submitted that in ensuring the invitation was flagged to recipients as a promotional item, high standards had been maintained at all times in the organisation and facilitation of this meeting and therefore it was not in breach of Clause 9.1.

Merck Sharp & Dohme referred to Case AUTH/1800/2/06 – Primary Care Trust Head of Prescribing v AstraZeneca which supported the fact that an invitation to a speaker meeting with no mention of a medicine would not require prescribing information to be included but should be clear as to the type of meeting it was, so as not to be disguised promotion.

To conclude, Merck Sharp & Dohme submitted that it had maintained high standards in flagging to recipients that the email invitation was promotional in nature; and as it did not believe the invitation required prescribing information and denied breaches of Clauses 4.1 and 9.1.

PANEL RULING

The Panel examined the invitation at issue. The subject heading was clear that the email was promotional and the complainant's version was headed 'This email contains promotional information and is sent to you as you have opted into receiving third-party information from Pulse'. The invitation was headed 'This event is organised and fully funded by MSD' and the MSD logo was included in the top right hand corner. This was followed by 'Cardiovascular Matters Improving the CV Health of Britain' and the details of the live webcast. This was the first of three webcasts. The first speaker was to discuss the scale of high CV risk and the evidence that could help inform treatment strategies and the other speaker would then highlight the opportunities within primary care that could make a difference to the high risk patient during every day clinical practice. Details about the two speakers were provided. The agenda stated that one was to speak on the 'Rationale for maintaining CV risk reduction as a key health priority' and the other on 'Strategies for action – opportunities to lower risk post CV Event'.

The Panel noted that there was no direct or implied mention of any medicine in the invitation. Recipients of the invitation would be clear that the webcast would include treatment strategies and was from a company, Merck Sharp & Dohme, which had medicines for use in cardiovascular disease. The company had made it clear that the invitation was promotional. The Panel considered that whilst it might be prudent to provide prescribing information for such medicines with the invitation, as the invitation did not promote any specific Merck Sharp and Dohme medicines it was not a breach of the Code not to. Thus the Panel ruled no breach of Clause 4.1. The Panel did not consider that high standards had not been maintained and therefore ruled no breach of Clause 9.1.

Complaint received	23 February 2017
Case completed	9 May 2017