

ANONYMOUS, NON-CONTACTABLE v BAYER

Conduct of representative

An anonymous, non-contactable complainant alleged that a named Bayer representative had not declared a conflict of interest in that her husband was a doctor in a named trust and gave her access.

Bayer's detailed response is given below.

The Panel noted that there would be occasions when representatives had links with health professionals and other relevant decision makers which would be of potential concern. In such cases it might be prudent for companies to consider changing a representative's territory so they did not call upon such people. The external perception of the arrangements was important.

The Panel noted that the representative's husband was a junior doctor in a named trust within her territory working as a cardiothoracic surgeon. This was disclosed by the representative to her manager when she was given the additional responsibility of promoting Xarelto in secondary care including the named trust at which her husband worked.

The Panel noted Bayer's submission about the actively promoted indications for Xarelto for Xarelto promotional activity and that, in its view, there was, therefore, no conflict of interest to declare as neither her husband nor the department within which he worked were targets for Xarelto promotional activity. The Panel further noted Bayer's submission that its representative call reporting system had revealed no call history corresponding to either the representative's husband, or the team within which he worked.

The Panel considered that there was no evidence to support the allegation that the representative had failed to maintain high standards and no breach of the Code was ruled.

An anonymous, non contactable complainant that signed them complaint off with a named health trust complained about the conduct of a named Bayer plc representative.

COMPLAINT

The complainant alleged that the representative was in breach of the Code as she had not declared a conflict of interest in that her husband was a doctor in the named trust and gave her access.

When writing to Bayer, the Authority asked it to consider the requirements of Clause 15.2.

RESPONSE

Bayer submitted that the representative in question was an employee of a third party agency and had been contracted to Bayer for approximately

12 months. When first contracted to Bayer, she was employed as a Territory Manager (TM), with responsibility to promote Xarelto (rivaroxaban) in primary care. Since May this year she had also been given in addition two small hospital accounts.

The representative's husband, was a junior doctor, a fellow in cardiothoracic surgery (ST6 level) at one of the named trusts.

Bayer noted that Xarelto was licensed for:

- Co-administration with acetylsalicylic acid (ASA) alone or with ASA plus clopidogrel or ticlopidine, for the prevention of atherothrombotic events in adult patients after an acute coronary syndrome (ACS) with elevated cardiac biomarkers.
- Prevention of venous thromboembolism (VTE) in adult patients undergoing elective hip or knee replacement surgery.
- Prevention of stroke and systemic embolism in adult patients with non-valvular atrial fibrillation with one or more risk factors, such as congestive heart failure, hypertension, age ≥ 75 years, diabetes mellitus, prior stroke or transient ischaemic attack.
- Treatment of deep vein thrombosis (DVT) and pulmonary embolism (PE), and prevention of recurrent DVT and PE in adults.

Xarelto was actively promoted only in the latter two indications listed above. Therefore, in the secondary care setting, Xarelto was promoted to cardiologists, stroke physicians, care of the elderly physicians, respiratory physicians and haematologists. Cardiothoracic surgeons were not within the target scope of promotion for Xarelto.

As stated above, when the representative was initially contracted to Bayer, she only worked in the primary care setting. As her husband worked as a surgeon in secondary care, there was no conflict of interest to declare.

When the representative was given the responsibility of working additionally in secondary care, she told her manager that her husband was a junior doctor within the named trust, working as a cardiothoracic surgeon. Cardiothoracic surgeons do not routinely manage patients with non-valvular atrial fibrillation, nor patients within scope of any of the other licensed indications for Xarelto. Therefore, Cardiothoracic surgeons, have never been within promotional scope for Xarelto representatives and, as such, there was no conflict of interest to declare as her husband and the department within which he worked was not within the target scope of promotion for Xarelto.

Bayer submitted that its representative call reporting system had revealed no call history corresponding to the representative's husband, nor corresponding

to the team within which he worked. Indeed, her husband was not listed within Bayer's customer database. Bayer noted that the representative's husband was a junior doctor within his department, and was not considered to be an opinion leader or influential decision maker within the NHS or the trust.

The representative's activity level at the NHS trust in question had been appropriate compared with the other areas she worked in; it represented 2.62% of her overall call volume.

Bayer submitted that it had uncovered no evidence to support an undeclared conflict of interest, nor had it uncovered any evidence to support allegations of inappropriate or unusual access to the NHS trust in question. In that regard Bayer noted that, the anonymous complainant had incorrectly cited the name of the trust despite claiming to work there.

Bayer considered that the representative in question had at all times maintained a high standard of ethical conduct in the discharge of her duties. Bayer therefore denied a breach of Clause 15.2.

PANEL RULING

The Panel noted that the complainant was anonymous and non-contactable. The Constitution and Procedure stated that anonymous complaints would be accepted, but that like all other complaints, the complainant had the burden of proving his/her complaint on the balance of probabilities. All complaints were judged on the evidence provided by the parties. The complainant could not be contacted for more information.

The Panel noted that there would be occasions when representatives had links with health professionals and other relevant decision makers which would be of potential concern. In such cases it might be prudent for companies to consider changing a representative's territory so they did not call upon such people. The external perception of the arrangements was important.

The Panel noted that the representative's husband was a junior doctor in a named trust within her territory working as a cardiothoracic surgeon. This was disclosed by the representative to her manager when she was given the additional responsibility of promoting Xarelto in secondary care including the named trust at which her husband worked.

The Panel noted Bayer's submission about the actively promoted indications for Xarelto and that, in its view, there was, therefore, no conflict of interest to declare as neither her husband nor the department within which he worked were targets for Xarelto promotional activity. The Panel further noted Bayer's submission that its representative call reporting system had revealed no call history corresponding to either the representative's husband, or to the team within which he worked.

The Panel considered that there was no evidence to support the allegation that the representative had failed to maintain high standards and no breach of Clause 15.2 was ruled.

Complaint received	31 August 2017
Case completed	28 September 2017

CODE OF PRACTICE REVIEW – November 2017

Cases in which a breach of the Code was ruled are indexed in **bold type**.

AUTH/2783/7/15	The Daily Telegraph/Director v Stirling Anglian	Arrangements for a meeting	Breaches Clauses 2, 9.1, 18.1, 21, 22.1, 22.1 Required by the Appeal Board to issue a corrective statement Audit and two further re-audits required by Appeal Board	No appeal Report from Panel to Appeal Board	Page 3
AUTH/2825/3/16 and AUTH/2926/3/16	Janssen v Boehringer Ingelheim and Lilly	Promotion of Jardiance	Breaches Clauses 2, 3.2, 9.1 and 12.1 Required by the Appeal Board to issue a corrective statement Recovery of item required by Appeal Board Audit and re-audit required by Appeal Board	No appeal Report from Panel to Appeal Board	Page 22
AUTH/2923/12/16	Hospital pharmacist v Merck Sharp & Dohme	Remicade advertisement	Breach Clause 7.2 Two breaches Clause 7.10	Appeal by complainant	Page 38
AUTH/2943/3/17	Ex-employee of a service provider v Bayer	Conduct of an employee	Breaches Clauses 2, 9.1 and 15.9	No appeal	Page 45
AUTH/2947/3/17	Anonymous v Sanofi	Representatives' call rates	Breaches Clauses 9.1 and 15.9	No appeal	Page 53
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AUTH/2954/4/17	Health professional v AstraZeneca	Conduct of a representative	Breaches Clauses 7.2, 7.4, 9.1, 15.2, 15.4 and 15.9	No appeal	Page 73
AUTH/2955/4/17	Anonymous non-contactable employee v Boehringer Ingelheim	Call rates	No breach	No appeal	Page 78