**CASE AUTH/2985/10/17**

# PHARMACIST v SUN PHARMA

## Email Promotion of Gemcitabine

**A lead pharmacist, cancer, complained about the email promotion of Gemcitabine by Sun Pharma. Gemcitabine was a cytotoxic agent used in the treatment of certain patients with non-small cell lung cancer (NSCLC). Sun Pharma's product was claimed to be the only licensed, ready-to-administer gemcitabine for infusion.**

**The complainant noted that Pouliquen *et al* (2012), cited in support of the claim 'Drugs made available as ready-to-administer doses minimise risk by reducing dosing errors, errors in administration and bacterial contamination' did not show that dosing errors were reduced. The authors concluded 'a reduced risk of medication errors and miscalculations' was achievable through management of chemotherapy preparation in a rational way. The article related to dose standardisation, not specifically presentation of ready-to-administer infusions. Pouliquen *et al* provided no explanation of their assertion. No quantification of risk reduction took place as part of the study. Furthermore, no explanation in the article was given to reducing administration errors, and no suggestion of a reduction in bacterial contamination was proposed.**

**The complainant alleged that the claim was not objective; by implication it distorted and exaggerated the risk reduction with ready-to-administer infusions. Further, the claim that ready-to-administer doses of medicines minimised risk could not be substantiated.**

**Conversely the complainant suggested that ready-to-administer Gemcitabine from Sun Pharma increased risk, because there was no ready-to-administer solution for 30% of patients (as cited in the advertisement). Furthermore, as the ready-to-administer product volume varied with dose, it would be necessary to either produce a variable volume for those doses, which increased manipulations required and therefore risk, or use a fixed volume for some patients and not others, which also introduced risk. It was therefore misleading to state that the product reduced risk when it increased risks for other patients.**

**Finally, the complainant noted that the database agency through which the email was sent, did not allow recipients to unsubscribe from an individual company. There was no option to decline emails from Sun Pharma, or to decline promotional emails. Declining emails from the database agency resulted in multiple organisations being affected. The complainant did not consider that he/she had consented to receive promotional emails from Sun Pharma.**

**The detailed response from Sun Pharma is given below.**

**The Panel noted that the email in question was headed 'The Only Licensed Ready-To-Administer Gemcitabine' in an orange highlighted box followed by 'The gemcitabine 10mg/ml ready-to-administer (RTA) infusion bags from Sun Pharma, are the first ever licensed gemcitabine RTA infusion bags' and the claim 'Drugs made available as ready-to-administer doses minimise risk by reducing dosing errors, errors in administration and bacterial contamination' referenced to Pouliquen *et al*. The email described the features of RTA gemcitabine 10mg/ml infusion bags.**

**The Panel noted that Pouliquen *et al* explained that a study was conducted to determine standardised rounded doses (SRD) for selected medicines. The preparations with selected SRD were presented in ready-to-administer IV bags. It did not appear that gemcitabine was one of the medicines used. Pouliquen *et al* stated that the determination of SRD allowed the management of chemotherapy preparation in a rational way with, *inter alia*, a prospective quality control, and a reduced risk of medication errors and miscalculations. The reduction of risk was not quantified nor did the article provide details of patient numbers and such like.**

**The Panel considered that the claim at issue implied that there was direct data to show that gemcitabine RTA dosing minimised risk by reducing dosing and administration errors and bacterial contamination and that was not so. Pouliquen *et al* examined dose standardisation in cancer drug units and did not appear to formally assess risk reduction. RTA gemcitabine was not referred to and Pouliquen *et al* did not assess bacterial contamination as implied by the claim.**

**The Panel also noted the complainant's concern that it was misleading to state that RTA gemcitabine reduced risk when there was no ready-to-administer solution for 30% of patients. The Panel considered that the claim implied reduced risk in all patients requiring RTA gemcitabine. Although a table at the end of the email at issue showed that RTA gemcitabine was only licensed in 5 out of 8 dose bands the immediate impression of the email was important particularly for those that might not study it in detail. The Panel considered that within the context of the page in question the claim 'Drugs made available as ready-to-administer doses minimise risk by reducing dosing errors, errors in administration and bacterial contamination' implied that such benefits had been established in relation to RTA gemcitabine and would be seen in all patients which was misleading. A breach of the Code was ruled.**

**The Panel noted that Pouliquen *et al* concluded that the determination of SRD, which could be**

**implemented by ready-to-use IV bags or dose adaptation of the prescription and external preparation, allowed the management of chemotherapy preparation in a rational way with, *inter alia*, a prospective quality control and a reduced risk of medication errors and miscalculations. The article made no reference to SRD reducing administration errors or bacterial contamination. The Panel considered that the claim at issue in relation to RTA gemcitabine could not be substantiated by Pouliquen *et al* and a further breach of the Code was ruled.**

**The Code prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel noted that Sun Pharma stated that when obtaining permission from health professionals to add them to their database, the database agency would initially telephone them and state that it would, from time to time, email information which might include, *inter alia*, medical and pharmaceutical promotional materials as well as official information. Terms and conditions referred to in an introductory registration email included the opt-in policy which referred to pharmaceutical promotional materials. It appeared that receipt of promotional materials was also referred to in the body of the registration email. Health professionals were contacted annually to validate details and given the option to opt-out of receiving emails.**

**The Panel noted the company's submission that the database agency had first approached the complainant by telephone in January 2016 during which his/her job title, email address and permission to proceed were checked. This was followed by a registration email which made it clear that promotional material from pharmaceutical companies would be sent. The Panel considered that on the available evidence, it appeared that on registration, the complainant had agreed to receive promotional material by email; no breach of the Code was ruled.**

**The Panel noted the complainant's concern that there was no facility to decline emails from Sun Pharma, or promotional emails. Supplementary information to the Code stated that where permission to use emails for promotional purposes had been given, each email sent should inform the recipient as to how to unsubscribe to them. Sun Pharma submitted that all communications included an opt-out button and the opportunity to contact the database agency to discuss any aspect of its services. The Panel noted that the opt-in process summary provided by the database agency stated that the terms and conditions include the opt-in policy which clearly stated that information provided might include pharmaceutical promotional materials and that users might opt-out of receiving such materials without losing the remainder of the service which, in the Panel's view, implied that on opting-out of receiving promotional emails, non-promotional emails might still be received. The Panel noted, however, that the opt-out policy in the email in question implied that by opting out of the email the recipient opted out of all emails including non-promotional emails.**

**The Panel made its ruling in relation to the email provided by the complainant which was the subject of the complaint. The Panel noted that the unsubscribe facility linked to the email in question required a recipient to unsubscribe to all emails including non-promotional emails. The Panel queried whether this was consistent with the spirit of the Code. Irrespective of its reservations above, on the information before it, it appeared that the email in question did inform the recipient how to unsubscribe from receiving further promotional emails. The Panel consequently ruled no breach of the Code.**

A lead pharmacist, cancer, complained about the email promotion of Gemcitabine (ref SUNUK031) by Sun Pharma. Gemcitabine was a cytotoxic agent, indicated in combination with cisplatin as first-line treatment of patients with locally advanced or metastatic non-small cell lung cancer (NSCLC). Sun Pharma's product was claimed to be the only licensed, ready-to-administer gemcitabine for infusion.

**COMPLAINT**

The complainant noted the claim 'Drugs made available as ready-to-administer doses minimise risk by reducing dosing errors, errors in administration and bacterial contamination'. This claim was referenced to Pouliquen *et al* (2012) which did not demonstrate any evidence that dosing errors were reduced. The authors of the study, published in a non-peer reviewed article, concluded 'a reduced risk of medication errors and miscalculations' was achievable through management of chemotherapy preparation in a rational way. The article related to dose standardisation, not specifically presentation of ready-to-administer infusions. Pouliquen *et al* provided no explanation of their assertion. No quantification of risk reduction took place as part of the study. Furthermore, no explanation in the article was given to reducing administration errors, and no suggestion of a reduction in bacterial contamination was proposed.

The complainant alleged that the claims were not objective and thus by implication were distorted and exaggerated the risk reduction with ready-to-administer infusions in breach of Clause 7.2.

In the complainant's view, the claim that ready-to-administer doses of medicines minimised risk could not be substantiated, in breach of Clause 7.4.

Conversely the complainant suggested that use of ready-to-administer Gemcitabine from Sun Pharma increased risk, because there was no ready-to-administer solution for 30% of patients (as cited in the advertisement). Furthermore, as the ready-to-administer product volume varied with dose, it would be necessary to either produce a variable volume for those doses, which increased manipulations required and therefore risk, or use a fixed volume for some patients and not others, which also introduced risk. It was therefore misleading to state that the product reduced risk when it also increased risks for other patients.

Finally, the complainant noted that the email was sent via a database agency. The database agency did not allow recipients to unsubscribe from an individual company. The distribution was explained by the following extract from the mailing:

> 'This email has been forwarded to you by [database agency], on behalf of Sun Pharma. If you would prefer not to receive ANY further emails, please click here*
>
> *NB This includes emails relating to other promoted brands (including those promoted by other organisations), as well as Medical Education (e.g. invitations to symposia, webinars etc), Medical Information (e.g. about new products, changes to licences etc), and also non-promotional emails.'

There was no option to decline emails from Sun Pharma, or to decline promotional emails. Declining emails from the database agency resulted in multiple organisations being affected. The complainant did not consider that he/she consented for Sun Pharma to send him/her promotional emails and therefore he/she alleged a breach of Clause 9.9.

When writing to Sun Pharma, the Authority asked it to consider the requirements of Clauses 7.2, 7.4 and 9.9 of the Code.

**RESPONSE**

Sun Pharma denied that its claims were not objective and, by implication, distorted and exaggerated the risk reduction with ready-to-administer infusions. On the contrary, Sun Pharma submitted that its claims were accurate, balanced, fair, objective and unambiguous and thus not in breach of Clause 7.2.

Sun Pharma accepted that Pouliquen *et al* did not state 'Drugs made available as ready-to-administer does minimise risk by reducing dosing errors, errors in administration and bacterial contamination', however the statement was supported and would be naturally inferred by any reasonable health professional who read the paper.

Sun Pharma noted that in the conclusion of Pouliquen *et al*, the authors determined that '[Standardised rounded doses are] indispensable for mass production, ensuring quality assurance, and eventually leading to automation of the production' and that this was exactly what the company had done. Sun Pharma explained that it had developed and obtained a licence for a mass production product with a two year shelf-life. As such, the quality of the product was assured. It must be assumed that the effect of this would be to reduce the risk of bacterial contamination on the basis that this was one of the key components of quality and thus for obtaining a product licence.

Furthermore, Pouliquen *et al* concluded that standard rounded doses would allow the management and preparation in a way that '… reduce medication errors and miscalculations'. The authors also stated earlier in the article that 'Automation of repetitive and complex tasks requiring vigilance and accuracy could reduce the incidence of errors and relieve operators of repetitive tasks'. Based on these observations, Sun Pharma considered that its claim that medicines in ready-to-administer doses would minimise risk by reducing dosing errors and errors in administration was accurate, balanced, fair and objective.

Sun Pharma noted that these observations applied equally to the complainant's assertion that the material at issue breached Clause 7.4.

Sun Pharma noted, as stated, that its product was the first licensed ready-to-administer infusion bag. The only other alternatives were specials. It was common knowledge that an unlicensed special should not be supplied where an equivalent licensed product could meet the special needs of the patient. The reasoning for this was set out in Guidance Note 14 from the Medicines and Healthcare products Regulatory Agency (MHRA), which stated at Paragraph 1.5:

> 'In the interest of public health the exemption [to the requirement for medicines to be the subject of a marketing authorisation] is narrowly drawn because these products, unlike licensed medicinal products, may not have been assessed by the Licensing Authority against the criteria of safety, quality and efficacy' (emphasis added).

As the Sun Pharma product was licensed, unlike all other products, the MHRA's own guidance made it clear that the Sun Pharma product carried less risk (and thus minimised risk) as opposed to other unlicensed alternatives. This alone substantiated the contents of the material at issue.

Sun Pharma stated that the European Medicines Agency's (EMA) Pharmacovigilance Risk Assessment Committee issued a good practice guide on risk minimisation and prevention of medication errors. This highlighted that, 'Some medicinal products require a number of diluting steps to achieve the final solution for injection … which increases the number of stages at which errors in dilution could be made'. The provision of a ready-to-administer product would remove this requirement for further dilution and therefore remove the chance for errors to occur.

For the sake of completeness, Sun Pharma also noted that, in another article it was stated that a specific advantage of dose banding (and thus Sun Pharma's ready-to-administer bags) was that prescribers might find: 'Banding tables make prescribing easier – fewer calculations and less scope for error'.

Sun Pharma suggested that this statement was supportive and substantiated the claims in its material. The company also considered that the article supported its position that it had complied with Clause 7.2.

Finally, Sun Pharma noted that it failed to understand the complainant's suggestion that its ready-to-administer solution increased risk on the basis that

there was no ready-to-administer solution for 30% of patients. Sun Pharma noted that it had never claimed to be able to service every patient who required a gemcitabine product and in fact, the company noted that its advertisement made it clear which dose bands it was able to supply as a licensed product. If there was no licensed ready-to-administer solution applicable for a patient, then Sun Pharma would not expect a responsible health professional to administer its product. In such circumstances a reasonable health professional would clearly continue with his/her current practice, which might be outsourcing production of a special to an external commercial compounding company (which would make the product according to NHS England dose bands). Sun Pharma submitted that its licensed product clearly reduced the risk for the majority of patients who needed gemcitabine (and reduced the risk for all patients who fell within one of the dose bands of its licensed product).

In light of all of the above, Sun Pharma denied a breach of Clause 7.4.

Sun Pharma refuted the complainant's assertion that it had breached Clause 9.9 of the Code.

As stated by the complainant, he/she had received the relevant email from the database agency – not from Sun Pharma. Sun Pharma had engaged the database agency as a service provider for the provision of content shaping and transmission and did not have access to the mailing lists or personal details of its mail recipients. The database agency was engaged on the basis that it had already received the consent of those mail recipients.

Sun Pharma noted that it had not disclosed the complainant's identity to the database agency and so it could not comment on whether he/she had consented to it sending him/her such marketing communications. Without sharing the complainant's personal data, Sun Pharma had asked the database agency to provide details of how it obtained consent to email health professionals. The database agency had consented to sharing its detailed presentation on its process for opting-in to receiving marketing communications, a copy was provided. Sun Pharma submitted that the database agency clearly had a well thought out and diligent process in place to ensure compliance with the Code.

Sun Pharma noted that health professionals were specifically informed when they opted-in that in doing so they would receive communications from clients of the database agency. The detailed steps taken to obtain health professionals' consent was one reason why Sun Pharma used the database agency as a service provider. Sun Pharma could only assume that the database agency had received such consent from the complainant. If the complainant was not sure whether he/she had opted-in to receive the database agency emails, then Sun Pharma would be happy to raise the matter with the database agency (so long as the complainant was happy for the company to share his/her personal details).

With regard to the complainant's assertion that there was no option to decline emails from Sun Pharma, the company noted that Clause 9.9 required that a health professional could opt-out of marketing communications at any time. There was no requirement for companies such as the database agency to provide recipients with the option of being able to opt-out of receiving emails from its individual clients. It was clear from the email communication in question, and from the complainant's own submission, that recipients could opt-out of receiving communications from the database agency. It was at the complainant's discretion of whether he/she wanted to receive the communications from the database agency or not.

In light of all of the above, Sun Pharma denied a breach of Clause 9.9.

The complainant gave permission for his/her details to be passed on to the database agency and in response to a request for further information, Sun Pharma submitted that the database agency provided it with four documents that clearly showed the complainant had opted-in to the 'the database agency' service in-line with data protection law and the Code. The documents described the procedure that the database agency followed to obtain permission; a preliminary telephone conversation followed by a detailed email. Sun Pharma noted that the telephone operator script for the database agency employees contained the following wording:

> '[The database agency] will from time to time send information by e-mail about our associated/ affiliated companies and their clients' product and services, which may include updates on specialist services, conferences, seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information.'

The database agency confirmed that the complainant received a telephone presentation by one of its operatives during which his/her job title, email, address and permission to proceed were checked. A reiteration email and explanation of how to access the agency's website was also sent having verified the complainant's contact details. The presentation and subsequent reiteration email included the above declaration. The database agency further noted that all communications included an opt-out button and the opportunity to contact the agency to discuss any aspect of its service.

Sun Pharma noted that the complainant was given the opportunity to opt out of receiving any such emails.

**PANEL RULING**

The Panel noted that the email in question was headed 'The Only Licensed Ready-To-Administer Gemcitabine' in an orange highlighted box followed by 'The gemcitabine 10mg/ml ready-to-administer (RTA) infusion bags from Sun Pharma, are the first ever licensed gemcitabine RTA infusion bags' and the claim at issue 'Drugs made available as ready-to-administer doses minimise risk by reducing dosing errors, errors in administration and bacterial contamination' which was referenced to Pouliquen

*et al*. The email then described the features of RTA gemcitabine 10mg/ml infusion bags.

The Panel noted that Pouliquen *et al*, an article, explained that a study was conducted in two hospitals in 2007 to determine standardised rounded doses (SRD) for selected medicines. The preparations with selected SRD were presented in ready-to-administer IV bags. It did not appear that gemcitabine was one of the chemotherapy agents used. The article concluded that the successful implementation of concept of SRD was confirmed in both hospitals. It was stated that the determination of SRD allowed the management of chemotherapy preparation in a rational way with, *inter alia*, a prospective quality control, and a reduced risk of medication errors and miscalculations. The reduction of risk was not quantified nor did the article provide details of patient numbers and such like.

The Panel considered that the claim at issue, as an integral part of a promotional piece about RTA gemcitabine, implied that there was direct data to show that gemcitabine RTA dosing minimised risk by reducing dosing and administration errors and bacterial contamination and that was not so. The article examined dose standardisation in cancer drug units. It did not appear that risk reduction was formally assessed nor were all assessed medicines identified. Paclitaxel, vinorelbine and rituximab and their doses were listed when giving examples of SRD in use at both hospitals. RTA gemcitabine was not referred to. In addition, Pouliquen *et al* did not assess bacterial contamination as implied by the claim in question.

The Panel also noted the complainant's concern that it was misleading to state that RTA gemcitabine reduced risk when there was no ready-to-administer solution for 30% of patients.

The Panel considered that the claim implied reduced risk in all patients requiring RTA gemcitabine. The Panel noted that although a table at the end of the email at issue showed that RTA gemcitabine was only licensed in 5 out of 8 dose bands the immediate impression of the email was of paramount importance particularly for those that might not study it in detail. The Panel considered that within the context of the page in question the claim 'Drugs made available as ready-to-administer doses minimise risk by reducing dosing errors, errors in administration and bacterial contamination' would be seen as a claim for the benefits of ready-to-administer gemcitabine and implied that such benefits had been established in relation to RTA gemcitabine and would be seen in all patients which was misleading. A breach of Clause 7.2 was ruled.

The Panel noted that Pouliquen *et al* concluded that the determination of SRD, which could be implemented by ready-to-use IV bags or dose adaptation of the prescription and external preparation, allowed the management of chemotherapy preparation in a rational way with, *inter alia*, a prospective quality control and, and a reduced risk of medication errors and miscalculations. The article made no reference to SRD reducing administration errors or bacterial contamination. The Panel considered that the claim at issue in relation to RTA gemcitabine could not be substantiated by Pouliquen *et al* and a breach of Clause 7.4 was ruled.

The Panel noted that Clause 9.9 prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel noted that Sun Pharma stated that when obtaining permission from health professionals to add them to their database, the database agency would initially telephone the health professional and state that it would, from time to time, email information about associated/affiliated companies, and their clients' products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information. According to a presentation prepared by the database agency, the health professional was then sent an introductory registration email. Terms and conditions referred to in this email included the opt-in policy which referred to pharmaceutical promotional materials. It appeared that receipt of promotional materials was also referred to in the body of the registration email. Once registration was complete, the health professional was sent a confirmation email. Health professionals were contacted annually to validate details and given the option to opt-out of receiving emails.

The Panel noted the company's submission that the database agency had first approached the complainant by telephone in January 2016 during which his/her job title, email address and permission to proceed were checked. This was followed by a registration email on 8 January 2016, a copy of which was provided, which made it clear that the database organisation intended to email promotional material from pharmaceutical companies. The Panel considered that on the available evidence, it appeared that on registration, the complainant had agreed to receive pharmaceutical promotional material by email. The Panel consequently ruled no breach of Clause 9.9 of the Code.

The Panel noted the complainant's concern that there was no facility to decline emails from Sun Pharma, or promotional emails. The Panel noted that the supplementary information to Clause 9.9 stated that where permission to use emails for promotional purposes had been given by a recipient, each email sent should inform the recipient as to how to unsubscribe to them. Sun Pharma submitted that all communications included an opt-out button and the opportunity to contact the database agency to discuss any aspect of its services. The Panel noted that the opt-in process summary in the presentation provided by the database agency stated that the terms and conditions include the opt-in policy which clearly stated that information provided might include pharmaceutical promotional materials and that users might opt-out of receiving such materials without losing the remainder of the service which, in the Panel's view, implied that on opting-out of receiving promotional emails, non-promotional emails might still be received.

The Panel noted, however, that the opt-out policy in the terms and conditions was inconsistent with the email in question provided by the complainant and about which he had complained which stated:

'This email has been forwarded to you by [the database agency], on behalf of Sun Pharma. If you would prefer not to receive ANY further emails, please click here*

*NB This includes emails relating to other promoted brands (including those promoted by other organisations), as well as Medical Education (e.g. invitations to symposia, webinars etc), Medical Information (e.g. about new products, changes to licences etc), and also non-promotional emails.'

The Panel made its ruling in relation to the email provided by the complainant which was the subject of the complaint. The Panel noted that the unsubscribe facility linked to the email in question required a recipient to unsubscribe to all emails including non-promotional emails. The Panel queried whether this was consistent with the spirit of the Code. Irrespective of its reservations above, on the information before it, it appeared that the email in question did inform the recipient how to unsubscribe from receiving further promotional emails. The Panel consequently ruled no breach of Clause 9.9 of the Code.

**Complaint received** **19 October 2017**

**Case completed** **4 June 2018**